

103^D CONGRESS
1ST SESSION

H. R. 1713

To establish the Resolution, Asset Management, and Liquidation Agency as a successor to the Resolution Trust Corporation, to abolish the Thrift Depositor Protection Oversight Board and the Resolution Trust Corporation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1993

Mr. VENTO introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

A BILL

To establish the Resolution, Asset Management, and Liquidation Agency as a successor to the Resolution Trust Corporation, to abolish the Thrift Depositor Protection Oversight Board and the Resolution Trust Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Revitalization of De-
5 pository Institution Liquidation Procedures Act of 1993”.

1 **TITLE I—SINGLE AGENCY FOR**
2 **CONSERVATOR AND RECEIV-**
3 **ERSHIP POWERS**

4 **SEC. 101. ESTABLISHMENT OF RESOLUTION, ASSET MAN-**
5 **AGEMENT, AND LIQUIDATION AGENCY.**

6 (a) IN GENERAL.—Section 21A of the Federal Home
7 Loan Bank Act (12 U.S.C. 1441a) is amended by striking
8 subsections (a) and (b) and inserting the following new
9 subsections:

10 “(a) RESOLUTION, ASSET MANAGEMENT, AND LIQ-
11 UIDATION AGENCY.—

12 “(1) ESTABLISHMENT.—There is hereby estab-
13 lished an agency in the executive branch to be
14 known as the Resolution, Asset Management, and
15 Liquidation Agency (hereafter in this section re-
16 ferred to as the ‘Agency’) under the direction of the
17 Secretary of the Treasury.

18 “(2) MANAGEMENT.—

19 “(A) ADMINISTRATOR.—The agency shall
20 be under the management of an Administrator
21 (hereafter in this section referred to as the ‘Ad-
22 ministrator’) who shall be appointed by the
23 President, by and with the advice and consent
24 of the Senate, and shall serve at the pleasure
25 of the President.

1 “(B) DEPUTY ADMINISTRATOR.—

2 “(i) APPOINTMENT.—The Agency
3 shall have a Deputy Administrator who
4 shall be appointed by the President, by and
5 with the advice and consent of the Senate.

6 “(ii) DUTIES AND POWERS.—The
7 Deputy Administrator shall—

8 “(I) perform such duties and ex-
9 ercise such powers as the Adminis-
10 trator may prescribe; and

11 “(II) exercise the duties and pow-
12 ers of the Administrator when the Ad-
13 ministrator is absent or unable to
14 serve or when the position of the Ad-
15 ministrator is vacant.

16 “(3) STAFF.—

17 “(A) IN GENERAL.—Subject to other pro-
18 visions of this section and section 104 of the
19 Revitalization of Depository Institution Liq-
20 uidation Procedures Act of 1993, the Adminis-
21 trator may appoint, direct, and fix the pay and
22 number of such officers and employees as the
23 administrator determines to be appropriate.

24 “(B) NONAPPLICABILITY OF OTHER PRO-
25 VISIONS.—Chapter 51 and subchapters III, VII,

1 and VIII of chapter 53 of title 5, United States
2 Code, shall not apply to the appointment or
3 compensation of employees of the Adminis-
4 trator.

5 “(C) STAFF FOR PURSUING CLAIMS
6 AGAINST INSTITUTION-AFFILIATED PARTIES.—

7 “(i) IN GENERAL.—The Administrator
8 shall maintain an executive-level position
9 and dedicated staff to assist and advise the
10 Administrator and other agencies in pursu-
11 ing cases, civil claims, and administrative
12 enforcement actions against institution-af-
13 filiated parties of insured depository insti-
14 tutions under the jurisdiction of the Ad-
15 ministrator.

16 “(ii) DUTIES.—Staff appointed under
17 clause (i) shall have such duties as the Ad-
18 ministrator establishes, including the duty
19 to compile and publish a semiannual report
20 to the Congress on the coordinated pursuit
21 of claims by all Federal financial institu-
22 tion regulatory agencies, including the De-
23 partment of Justice and the Securities and
24 Exchange Commission.

1 “(D) UTILIZATION OF PERSONNEL OF
2 OTHER AGENCIES.—With the agreement of any
3 executive agency (as defined in section 105 of
4 title 5, United States Code), the Administrator
5 shall, whenever practicable, utilize the personnel
6 of any such agency on a reimbursable basis to
7 cover actual and reasonable expenses.

8 “(E) PROHIBITION ON PAYMENTS OF BO-
9 NUSES.—Notwithstanding any other provision
10 of law, the Administrator may not pay any offi-
11 cer whose annual rate of basic pay is equal to
12 or greater than the annual rate of basic pay
13 which is payable under Level I of the Executive
14 Schedule any bonus, award, or other similar
15 cash payment.

16 “(4) COMPENSATION AND GRADE.—

17 “(A) IN GENERAL.—The Administrator
18 shall, at all times, classify jobs in the same
19 manner as the Federal Deposit Insurance Cor-
20 poration and shall provide the same rates of
21 basic pay and additional compensation and ben-
22 efits to employees as those provided to employ-
23 ees of the Federal Deposit Insurance Corpora-
24 tion.

1 “(B) PARTICIPATION IN BENEFIT
2 PLANS.—Employees of the Agency shall be per-
3 mitted by the Administrator and the Federal
4 Deposit Insurance Corporation to participate in
5 the same health, insurance, pension, and other
6 benefit plans available to employees of the Fed-
7 eral Deposit Insurance Corporation under the
8 same conditions available to employees of the
9 Federal Deposit Insurance Corporation.

10 “(C) REIMBURSEMENT.—The Adminis-
11 trator shall reimburse the Federal Deposit In-
12 surance Corporation for any additional costs in-
13 curred by such corporation with respect to em-
14 ployees of the Agency pursuant to this para-
15 graph.

16 “(5) REORGANIZATIONS.—

17 “(A) IN GENERAL.—If, pursuant to a
18 transfer of functions, a major reorganization, a
19 reduction-in-force or otherwise, the Adminis-
20 trator, in the sole discretion of the Adminis-
21 trator, determines that the services of an em-
22 ployee are unnecessary, the Administrator shall
23 transfer, and the Federal Deposit Insurance
24 Corporation shall accept, such employee at the
25 closest office of the Federal Deposit Insurance

1 Corporation in accordance with the provisions
2 of paragraphs (1), (2), and (4) of section 404
3 of the Financial Institutions Reform, Recovery
4 and Enforcement Act of 1989.

5 “(B) APPLICABILITY OF SECTION 404.—
6 Paragraphs (1), (2), and (4) of section 404 of
7 the Financial Institutions Reform, Recovery,
8 and Enforcement Act of 1989 shall apply with
9 respect to each employee referred to in subpara-
10 graph (A) (of this paragraph) in the same man-
11 ner such paragraphs applied with respect to
12 employees identified for transfer under section
13 403(b) of such Act.

14 “(6) AGREEMENTS LIMITING RIGHTS.—The
15 protections provided to employees pursuant to para-
16 graphs (4) and (5) may not be limited or modified
17 by contract, interagency agreement, or otherwise.

18 “(7) GAO STUDY OF TEMPORARY EMPLOY-
19 EES.—Within 6 months of the transfer of employees
20 to the Administrator pursuant to this section, the
21 Comptroller General of the United States shall issue
22 a report concerning the advisability of limiting the
23 Agency’s continued use of Liquidation Grade em-
24 ployees.

1 “(8) SUNSET PROVISION.—The authority of the
2 Administrator and the Agency to be appointed as a
3 conservator or receiver of an insured depository in-
4 stitution (as defined in section 3(c) of the Federal
5 Deposit Insurance Act) shall cease on October 1,
6 1998.

7 “(b) DUTIES AND POWERS.—

8 “(1) DUTY TO RESOLVE FAILED DEPOSITORY
9 INSTITUTIONS.—The duty of the Administrator shall
10 be to manage and resolve all insured depository in-
11 stitutions for which the Administrator has been ap-
12 pointed conservator or receiver.

13 “(2) GENERAL POWERS.—In addition to the
14 conservatorship and receivership powers under sec-
15 tions 21C and 21D with regard to all insured depos-
16 itory institutions and subject to any other provision
17 of this section, the Administrator shall have the fol-
18 lowing powers:

19 “(A) To adopt, alter, and use an agency
20 seal.

21 “(B) To enter into contracts.

22 “(C) To make advance, progress, or other
23 payments.

24 “(D) To acquire, hold, lease, mortgage,
25 maintain, or dispose of, at public or private

1 sale, real and personal property, using any le-
2 gally available private sector methods, including
3 securitization of debt or equity, limited partner-
4 ships, mortgage investment conduits, and real
5 estate investment trusts, and otherwise exercise
6 all the usual incidents of ownership of property
7 necessary and convenient to the operations of
8 the Agency.

9 “(E) To sue and be sued in any court of
10 competent jurisdiction.

11 “(F) To deposit any securities or funds
12 held by the Agency in any facility or depository
13 described in section 13(b) of the Federal De-
14 posit Insurance Act under the terms and condi-
15 tions applicable to the Federal Deposit Insur-
16 ance Corporation under such section 13(b) and
17 pay fees with respect to, and receive interest
18 and dividends on, any such deposit.

19 “(G) To take warrants, voting and
20 nonvoting equity, or other participation inter-
21 ests in institutions or assets or properties of in-
22 stitutions for which the Agency has been ap-
23 pointed conservator or receiver.

24 “(H) To make loans and, with respect to
25 eligible residential properties, develop risk shar-

1 ing structures and other credit enhancements to
2 assist in the provision of property ownership,
3 rental, and cooperative housing opportunities
4 for lower- and moderate-income families.

5 “(I) To exercise any other power estab-
6 lished under this section and such incidental
7 powers as are necessary to carry out the Ad-
8 ministrator’s duties and functions under this
9 section and sections 21C and 21D.

10 “(3) SPECIAL POWERS.—In addition to the
11 powers of the Administrator described in paragraph
12 (2), the Administrator shall have the following
13 powers:

14 “(A) CONTRACTS.—The Administrator
15 may enter into contracts with any person, in-
16 cluding State housing finance authorities (as
17 such term is defined in section 1301 of the Fi-
18 nancial Institutions Reform, Recovery, and En-
19 forcement Act of 1989) and insured depository
20 institutions, which the Administrator deter-
21 mines to be necessary or appropriate to carry
22 out its responsibilities under this section. Such
23 contracts shall be subject to the procedures
24 adopted pursuant to paragraph (7).

1 “(B) UTILIZATION OF PRIVATE SECTOR.—

2 In carrying out the Administrator’s duties
3 under this section and sections 21C and 21D,
4 the Administrator shall utilize the services of
5 private persons, including real estate and loan
6 portfolio asset management, property manage-
7 ment, auction marketing, and brokerage serv-
8 ices, if such services are available in the private
9 sector and the Administrator determines utiliza-
10 tion of such services are practicable and effi-
11 cient.

12 “(C) MERGERS AND CONSOLIDATIONS.—

13 The Administrator may require a merger or
14 consolidation of any institution over which the
15 Administrator has jurisdiction, if such merger
16 or consolidation is consistent with section
17 13(c)(4) of the Federal Deposit Insurance Act.

18 “(D) ORGANIZATION OF SAVINGS ASSOCIA-

19 TIONS.—The Administrator may organize 1 or
20 more Federal savings associations—

21 “(i) which shall be chartered by the
22 Director of the Office of Thrift Super-
23 vision,

24 “(ii) the deposits of which, if any,
25 shall be insured by the Federal Deposit In-

1 surance Corporation through the Savings
2 Association Insurance Fund, and

3 “(iii) which shall operate in accord-
4 ance with subsection (e).

5 “(4) OATHS; SUBPOENAS.—

6 “(A) IN GENERAL.—In the course of, or in
7 connection with, any proceeding under this sec-
8 tion, or in connection with any claim, the Ad-
9 ministrators and any representative of the Ad-
10 ministrators, including any person designated to
11 conduct any hearing under this section, shall
12 have the following powers:

13 “(i) To administer oaths and affirma-
14 tions.

15 “(ii) To take depositions or cause
16 depositions to be taken.

17 “(iii) To issue, revoke, quash, or mod-
18 ify subpoenas and subpoenas duces tecum.

19 “(B) SUBPOENAS.—The attendance of wit-
20 nesses and the production of documents pro-
21 vided for in this subsection may be required
22 from any place in any State or in any territory
23 or other place subject to the jurisdiction of the
24 United States at any designated place where
25 such proceeding is being conducted.

1 “(C) ENFORCEMENT OF SUBPOENAS.—

2 The Administrator or any party to proceedings
3 under this section may apply to the United
4 States District Court for the District of Colum-
5 bia, or the United States district court for the
6 judicial district or the United States court in
7 any territory in which such proceeding is being
8 conducted, or where the witness resides or car-
9 ries on business, for enforcement of any sub-
10 poena or subpoena duces tecum issued pursuant
11 to this subsection, and such courts shall have
12 jurisdiction and power to order and require
13 compliance with the subpoena or subpoena
14 duces tecum.

15 “(D) WITNESS FEES.—Witnesses subpoe-
16 naed under this subsection shall be paid the
17 same fees and mileage that are paid witnesses
18 in the district courts of the United States.

19 “(E) ATTORNEYS’ FEES.—

20 “(i) AWARD.—Any court having juris-
21 diction of any proceeding instituted under
22 this section by an insured depository insti-
23 tution or a director or officer of any insti-
24 tution, may allow to any such party such

1 reasonable expenses and attorneys' fees as
2 the court deems just and proper.

3 “(ii) PAYMENT.—Any expenses or fees
4 awarded under clause (i) by any court shall
5 be paid by the depository institution or by
6 the Administrator from assets of the insti-
7 tution.

8 “(F) MISDEMEANOR.—Any person who
9 willfully fails or refuses to attend and testify or
10 to answer any lawful inquiry or to produce
11 books, papers, correspondence, memoranda,
12 contracts, agreements, or other records, if in
13 such person's power to do so, in obedience to
14 the subpoena of the Administrator, shall, upon
15 conviction, be subject to a fine under title 18,
16 United States Code, imprisonment for a term of
17 not more than 1 year, or both.

18 “(5) CONDUCT OF ADMINISTRATOR'S DUTIES AS
19 CONSERVATOR OR RECEIVER.—The Administrator
20 shall carry out the Administrator's responsibilities as
21 conservator or receiver for insured depository insti-
22 tutions in a manner which—

23 “(A) maximizes the net present value re-
24 turn from the sale or other disposition of—

1 “(i) institutions for which the Admin-
2 istrator has been appointed conservator or
3 receiver; or

4 “(ii) the assets of such institutions;

5 “(B) minimizes the impact of such trans-
6 actions on local real estate and financial mar-
7 kets;

8 “(C) makes efficient use of funds obtained
9 from the Treasury of the United States (wheth-
10 er by appropriation or borrowing, including
11 funds borrowed from the Federal Financing
12 Bank);

13 “(D) minimizes the amount of any loss re-
14 alized in the resolution of cases; and

15 “(E) maximizes the preservation of the
16 availability and affordability of residential real
17 property for low- and moderate-income individ-
18 uals.

19 “(6) PROHIBITED PRACTICES.—The Adminis-
20 trator may not use any authority under this sub-
21 section to engage in any of the following activities:

22 “(A) Sell assets of an insured depository
23 institution by providing a loan for any portion
24 of the purchase price which—

1 “(i) defers or delays the payment of
2 interest; or

3 “(ii) obligates the purchaser to pay in-
4 terest only out of the net income realized
5 by the purchaser from the assets.

6 “(B) Arrange for the issuance of securities
7 backed by a pool of the loan assets of an in-
8 sured depository institution unless the assets—

9 “(i) have been evaluated using similar
10 underwriting standards and criteria;

11 “(ii) have long average maturities;

12 “(iii) do not require balloon payments
13 of principal; and

14 “(iv) provide for the payment of inter-
15 est at rates that are based upon the same
16 indexes,

17 and unless any representation or warranty of-
18 fered with the security does not guarantee to
19 the purchaser of the securities, directly or indi-
20 rectly, an investment return.

21 “(C) require the inclusion of an asset of an
22 insured depository institution in a bulk sale of
23 assets if the Agency has received a good faith
24 offer to purchase the asset for a price and on
25 terms that would result in proceeds to the

1 Agency in excess of those that would be realized
2 for that asset in the bulk sale.

3 “(D) LIMITATION ON CAPITAL CONTRIBU-
4 TION AUTHORITY.—

5 “(i) IN GENERAL.—The Agency may
6 not make any payment in the form of a
7 capital contribution to a depository institu-
8 tion which, at the time of payment, is an
9 institution for which the Agency or any
10 other person is acting as conservator.

11 “(ii) LENDING AUTHORITY NOT AF-
12 FECTED.—Clause (i) shall not be con-
13 strued as prohibiting the Corporation from
14 making loans or advances to any such in-
15 stitution.

16 “(7) REGULATIONS, POLICIES, AND PROCE-
17 DURES.—

18 “(A) STRATEGIES, POLICIES, AND
19 GOALS.—The Administrator may prescribe such
20 regulations and issue such orders, in accordance
21 with subchapter II of chapter 5 of title 5, Unit-
22 ed States Code, as the Administrator deter-
23 mines to be appropriate to carry out this sec-
24 tion and sections 21C and 21D.

1 “(B) PREPARATION AND MAINTENANCE OF
2 RECORDS RELATING TO SOLICITATION AND AC-
3 CEPTANCE OF OFFERS.—The Administrator
4 shall—

5 “(i) document decisions made in the
6 solicitation and selection process and the
7 reasons for the decisions; and

8 “(ii) maintain such documentation in
9 the offices of the Agency, as well as any
10 other documentation relating to the solici-
11 tation and selection process.

12 “(C) DISTRESSED AREAS.—

13 “(i) IN GENERAL.—In developing the
14 Agency’s policies for implementing this
15 section, the Administrator shall take the
16 action described in clause (ii) to avoid ad-
17 verse economic impact for those real estate
18 markets that are distressed.

19 “(ii) VALUATION AND DISPOSITION.—

20 “(I) IN GENERAL.—The Admin-
21 istrator shall establish an appraisal or
22 other valuation method for determin-
23 ing the market value of real property.

24 “(II) CONSIDERATION OF CER-
25 TAIN FACTORS.—With respect to a

1 real property asset with a market
2 value in excess of a certain dollar
3 limit (such limit to be determined by
4 the Administrator), consideration
5 shall be given to the volume of assets
6 above such limit and the potential im-
7 pact of sales in distressed areas.

8 “(III) SALES IN DISTRESSED
9 AREAS.—The Administrator shall not
10 sell a real property asset located in a
11 distressed area without obtaining at
12 least the minimum disposition price,
13 unless a determination has been made
14 that such a transaction furthers the
15 objectives set forth in paragraph (5).

16 “(iii) EXCEPTION.—The provisions of
17 this subparagraph shall not apply to any
18 property which is subject to the require-
19 ments of subsection (c).

20 “(D) DEFINITIONS.—For the purposes of
21 this subsection—

22 “(i) MINIMUM DISPOSITION PRICE.—

23 “(I) IN GENERAL.—The term
24 ‘minimum disposition price’ means 95

1 percent of the market value estab-
2 lished by the Administrator.

3 “(II) CHANGE IN PERCENT-
4 AGE.—The Administrator, in the Ad-
5 ministrator’s discretion, may change
6 the percentage provided in subclause
7 (I) from time to time if the Adminis-
8 trator determines that such change
9 does not adversely impact the objec-
10 tives set forth in paragraph (5).

11 “(ii) SELL A REAL PROPERTY
12 ASSET.—The term ‘sell a real property
13 asset’ means to convey all title and interest
14 in a piece of tangible real property in
15 which the Administrator has a fee simple
16 or equivalent interest.

17 “(iii) REAL PROPERTY.—The term
18 ‘real property’ does not include loans se-
19 cured by real property, joint ventures, par-
20 ticipation interests, options, or other simi-
21 lar interests.

22 “(iv) SELL.—The term ‘sell’ does not
23 include hypothecation of assets, issuance of
24 asset backed securities, issuance of joint

ventures, or participation interests, or other similar activities.

“(v) DISTRESSED AREA.—

“(I) IN GENERAL.—The term ‘distressed area’ means the geographic areas in those political subdivisions designated from time to time by the Administrator as having depressed real estate markets.

“(II) INITIAL DESIGNATIONS.—

Unless the Administrator designates otherwise, the States of Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, and Texas shall be deemed to be distressed areas for purposes of this subsection.

“(vi) MARKET VALUE.—The term ‘market value’ means the most probable price which a property should bring in a competitive and open market if—

“(I) all conditions requisite to a fair sale are present,

“(II) the buyer and seller are acting prudently and are knowledgeable, and

1 “(III) the price is not affected by
2 any undue stimulus.

3 “(E) REAL ESTATE ASSET DIVISION.—

4 “(i) ESTABLISHMENT.—The Adminis-
5 trator shall establish a Real Estate Asset
6 Division to assist and advise the Adminis-
7 trator with respect to the management,
8 sale, or other disposition of real property
9 assets of institutions for which the Admin-
10 istrator has been appointed conservator or
11 receiver.

12 “(ii) DUTIES.—The Real Estate Asset
13 Division shall have such duties as the Ad-
14 ministrator establishes, including the publi-
15 cation of an inventory of real property as-
16 sets of institutions subject to the jurisdic-
17 tion of the Administrator.

18 “(iii) INVENTORY.—The inventory re-
19 quired under clause (ii) shall be updated
20 and published semiannually and shall iden-
21 tify properties with natural, cultural, rec-
22 reational, or scientific values of special sig-
23 nificance.

24 “(8) PERIODIC FINANCING STATEMENTS.—The
25 Administrator shall prepare periodic financing state-

1 ments for the Congress and the Secretary of the
2 Treasury which shall detail—

3 “(A) anticipated funding requirements for
4 operations, case resolution, and asset liquida-
5 tion,

6 “(B) anticipated payments on previously
7 issued notes, guarantees, other obligations, and
8 related activities, and

9 “(C) any proposed use of notes, guarantees
10 or other obligations.

11 “(9) GOAL FOR PARTICIPATION OF SMALL BUSI-
12 NESS CONCERNS.—The Administrator shall have an
13 annual goal that presents the maximum practicable
14 opportunity for small business concerns and small
15 business concerns owned and controlled by socially
16 and economically disadvantaged individuals to par-
17 ticipate in the performance of contracts awarded by
18 the Administrator.”.

19 (b) TEMPORARY PRESIDENTIAL DETAIL TO FILL AD-
20 MINISTRATOR’S POSITION.—The position of Adminis-
21 trator of the Resolution, Asset Management, and Liquida-
22 tion Agency may be treated by the President as a position
23 which is vacant as of the date of the enactment of this
24 Act due to a resignation for purposes of section 3347 of
25 title 5, United States Code.

1 (c) EXEMPTION FROM PROVISIONS RELATING TO
2 THE ACQUISITION AND DISPOSAL OF REAL PROPERTY.—

3 Section 602 of the Federal Property and Administrative
4 Services Act of 1949 (40 U.S.C. 474) is amended by—

5 (1) redesignating subsection (f) as subsection
6 (g); and

7 (2) inserting after subsection (e) the following
8 new subsection:

9 “(f) INAPPLICABILITY TO RAMLA.—Titles I, II, IV,
10 and VIII of this Act shall not apply with respect to the
11 acquisition or disposal of real property by the Adminis-
12 trator of the Resolution, Asset Management, and Liquida-
13 tion Agency.”.

14 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

15 (1) Section 21A of the Federal Home Loan
16 Bank Act (12 U.S.C. 1441a) is amended by striking
17 “Corporation”, “Thrift Depositor Protection Over-
18 sight Board” and “chief executive officer” each
19 place any such term appears (other than in sub-
20 sections (a) and (b) of such section, as amended by
21 subsection (a) of this section) and inserting “Admin-
22 istrator”.

23 (2) Section 21A of the Federal Home Loan
24 Bank Act (12 U.S.C. 1441a) is amended by striking
25 subsection (m).

1 (3) Section 21B is amended by striking “Thrift
2 Depositor Protection Oversight Board” each place
3 such term appears and inserting “Administrator”.

4 (4) Section 21(B)(k) of the Federal Home Loan
5 Bank Act (12 U.S.C. 1441b(k)) is amended—

6 (A) by striking paragraph (7) and redesign-
7 nating paragraphs (2) through (6) as para-
8 graphs (3) through (7), respectively; and

9 (B) by inserting after paragraph (1) the
10 following new paragraph:

11 “(2) ADMINISTRATOR.—The term ‘Adminis-
12 trator’ means the Administrator of the Resolution,
13 Asset Management, and Liquidation Agency.”.

14 **SEC. 102. CONSERVATORSHIP AND RECEIVERSHIP POWERS**
15 **OF ADMINISTRATOR.**

16 (a) IN GENERAL.—The Federal Home Loan Bank
17 Act (12 U.S.C. 1421 et seq.) is amended by inserting after
18 section 21B the following new sections:

19 **“SEC. 21C. CONSERVATORSHIP AND RECEIVERSHIP POW-**
20 **ERS OF ADMINISTRATOR.**

21 “(a) APPOINTMENT OF ADMINISTRATOR AS CON-
22 SERVATOR OR RECEIVER.—

23 “(1) IN GENERAL.—Notwithstanding any other
24 provision of Federal law, the law of any State, or the
25 constitution of any State, the Administrator of the

1 Resolution, Asset Management, and Liquidation
2 Agency (hereafter in this section referred to as the
3 ‘Administrator’ and ‘Agency’, respectively) may ac-
4 cept appointment and act as conservator or receiver
5 for any insured depository institution upon appoint-
6 ment in the manner provided in paragraph (2) or
7 (3).

8 “(2) FEDERAL DEPOSITORY INSTITUTIONS.—

9 “(A) APPOINTMENT.—

10 “(i) CONSERVATOR.—The Adminis-
11 trator may, at the discretion of the super-
12 visory authority, be appointed conservator
13 of any insured Federal depository institu-
14 tion or District bank and the Adminis-
15 trator may accept such appointment.

16 “(ii) RECEIVER.—The Administrator
17 shall be appointed receiver, and shall ac-
18 cept such appointment, whenever a receiver
19 is appointed for the purpose of liquidation
20 or winding up the affairs of an insured
21 Federal depository institution or District
22 bank by the appropriate Federal banking
23 agency, notwithstanding any other provi-
24 sion of Federal law or the code of law for
25 the District of Columbia.

1 “(B) ADDITIONAL POWERS.—In addition
2 to and not in derogation of the powers con-
3 ferred and the duties imposed by this section on
4 the Administrator as conservator or receiver,
5 the Administrator, to the extent not inconsis-
6 tent with such powers and duties, shall have any
7 other power conferred on or any duty (which is
8 related to the exercise of such power) imposed
9 on a conservator or receiver for any Federal de-
10 pository institution under any other provision of
11 law.

12 “(C) ADMINISTRATOR NOT SUBJECT TO
13 ANY OTHER AGENCY.—When acting as con-
14 servator or receiver pursuant to an appointment
15 described in subparagraph (A), the Adminis-
16 trator shall not be subject to the direction or
17 supervision of any other executive agency (as
18 defined in section 105 of title 5, United States
19 Code) or any State in the exercise of the Ad-
20 ministrator’s rights, powers, and privileges.

21 “(D) DEPOSITORY INSTITUTION IN
22 CONSERVATORSHIP SUBJECT TO BANKING
23 AGENCY SUPERVISION.—Notwithstanding sub-
24 paragraph (C), any Federal depository institu-
25 tion for which the Administrator has been ap-

1 pointed conservator shall remain subject to the
2 supervision of the appropriate Federal banking
3 agency.

4 “(3) INSURED STATE DEPOSITORY INSTITU-
5 TIONS—

6 “(A) APPOINTMENT BY APPROPRIATE
7 STATE SUPERVISOR.—Whenever the authority
8 having supervision of any insured State deposi-
9 tory institution (other than a District deposi-
10 tory institution) appoints a conservator or re-
11 ceiver for such institution and tenders appoint-
12 ment to the Administrator, the Administrator
13 may accept such appointment.

14 “(B) ADDITIONAL POWERS.—In addition
15 to the powers conferred and the duties related
16 to the exercise of such powers imposed by State
17 law on any conservator or receiver appointed
18 under the law of such State for an insured
19 State depository institution, the Administrator,
20 as conservator or receiver pursuant to an ap-
21 pointment described in subparagraph (A), shall
22 have the powers conferred and the duties im-
23 posed by this section on the Administrator as
24 conservator or receiver.

1 “(C) ADMINISTRATOR NOT SUBJECT TO
2 ANY OTHER AGENCY.—When acting as con-
3 servator or receiver pursuant to an appointment
4 described in subparagraph (A), the Adminis-
5 trator shall not be subject to the direction or
6 supervision of any other executive agency (as
7 defined in section 105 of title 5, United States
8 Code) or any State in the exercise of the Ad-
9 ministrator’s rights, powers, and privileges.

10 “(D) DEPOSITORY INSTITUTION IN
11 CONSERVATORSHIP SUBJECT TO BANKING
12 AGENCY SUPERVISION.—Notwithstanding sub-
13 paragraph (C), any insured State depository in-
14 stitution for which the Administrator has been
15 appointed conservator shall remain subject to
16 the supervision of the appropriate State bank or
17 savings association supervisor.

18 “(4) APPOINTMENT OF ADMINISTRATOR BY
19 THE ADMINISTRATOR.—Notwithstanding any other
20 provision of Federal law, the law of any State, or the
21 constitution of any State, the Administrator may ap-
22 point the Administrator as sole conservator or re-
23 ceiver of any insured State depository institution
24 if—

25 “(A) the Administrator determines—

1 “(i) that—

2 “(I) a conservator, receiver, or
3 other legal custodian has been ap-
4 pointed for such institution;

5 “(II) such institution has been
6 subject to the appointment of any
7 such conservator, receiver, or custo-
8 dian for a period of at least 15 con-
9 secutive days; and

10 “(III) 1 or more of the depositors
11 in such institution is unable to with-
12 draw any amount of any insured de-
13 posit; or

14 “(ii) that such institution has been
15 closed by or under the laws of any State;
16 and

17 “(B) the Administrator determines that 1
18 or more of the grounds specified in paragraph
19 (5)—

20 “(i) existed with respect to such insti-
21 tution at the time—

22 “(I) the conservator, receiver, or
23 other legal custodian was appointed;
24 or

1 “(II) such institution was closed;

2 or

3 “(ii) exist at any time—

4 “(I) during the appointment of
5 the conservator, receiver, or other
6 legal custodian; or

7 “(II) while such institution is
8 closed.

9 “(5) GROUNDS FOR APPOINTING CONSERVATOR
10 OR RECEIVER.—The grounds for appointing a con-
11 servator or receiver (which may be the Adminis-
12 trator) for any insured depository institution are as
13 follows:

14 “(A) ASSETS INSUFFICIENT FOR OBLIGA-
15 TIONS.—The institution’s assets are less than
16 the institution’s obligations to its creditors and
17 others, including members of the institution.

18 “(B) SUBSTANTIAL DISSIPATION.—Sub-
19 stantial dissipation of assets or earnings due
20 to—

21 “(i) any violation of any statute or
22 regulation; or

23 “(ii) any unsafe or unsound practice.

1 “(C) UNSAFE OR UNSOUND CONDITION.—
2 An unsafe or unsound condition to transact
3 business.

4 “(D) CEASE AND DESIST ORDERS.—Any
5 willful violation of a cease-and-desist order
6 which has become final.

7 “(E) CONCEALMENT.—Any concealment of
8 the institution’s books, papers, records, or as-
9 sets, or any refusal to submit the institution’s
10 books, papers, records, or affairs for inspection
11 to any examiner or to any lawful agent of the
12 appropriate Federal banking agency or State
13 bank supervisor.

14 “(F) INABILITY TO MEET OBLIGATIONS.—
15 The institution is likely to be unable to pay its
16 obligations or meet its depositors’ demands in
17 the normal course of business.

18 “(G) LOSSES.—The institution has in-
19 curred or is likely to incur losses that will de-
20 plete all or substantially all of its capital, and
21 there is no reasonable prospect for the institu-
22 tion to become adequately capitalized (as de-
23 fined in section 38(b) of the Federal Deposit
24 Insurance Act) without Federal assistance.

1 “(H) VIOLATIONS OF LAW.—Any violation
2 of any law or regulation, or any unsafe or un-
3 sound practice or condition that is likely to—

4 “(i) cause insolvency or substantial
5 dissipation of assets or earnings;

6 “(ii) weaken the institution’s condi-
7 tion; or

8 “(iii) otherwise seriously prejudice the
9 interests of the institution’s depositors or
10 the deposit insurance fund.

11 “(I) CONSENT.—The institution, by resolu-
12 tion of the institution’s board of directors,
13 shareholders, or members, consents to the ap-
14 pointment.

15 “(J) CESSATION OF INSURED STATUS.—
16 The institution ceases to be an insured institu-
17 tion.

18 “(K) UNDERCAPITALIZATION.—The insti-
19 tution is undercapitalized (as defined in section
20 38(b) of the Federal Deposit Insurance Act),
21 and—

22 “(i) has no reasonable prospect of be-
23 coming adequately capitalized (as defined
24 in such section);

1 “(ii) fails to become adequately cap-
2 italized when required to do so under sec-
3 tion 38(f)(2)(A) of the Federal Deposit In-
4 surance Act;

5 “(iii) fails to submit a capital restora-
6 tion plan acceptable to the appropriate
7 Federal banking agency within the time
8 prescribed under section 38(e)(2)(D) of
9 such Act; or

10 “(iv) materially fails to implement a
11 capital restoration plan submitted and ac-
12 cepted under section 38(e)(2) of such Act.

13 “(L) CRITICAL UNDERCAPITALIZATION.—

14 The institution—

15 “(i) is critically undercapitalized (as
16 defined in section 38(b) of the Federal De-
17 posit Insurance Act); or

18 “(ii) otherwise has substantially insuf-
19 ficient capital.

20 “(6) APPOINTMENT BY DIRECTOR OF THE OF-
21 FICE OF THRIFT SUPERVISION.—

22 “(A) CONSERVATOR.—The Administrator
23 may, at the discretion of the Director of the Of-
24 fice of Thrift Supervision, be appointed con-

1 servator and the Administrator may accept any
2 such appointment.

3 “(B) RECEIVER.—Whenever the Director
4 of the Office of Thrift Supervision appoints a
5 receiver under the provisions of section
6 5(d)(2)(C) of the Home Owners’ Loan Act for
7 the purpose of liquidation or winding up any
8 savings association’s affairs the Administrator
9 shall be appointed.

10 “(7) JUDICIAL REVIEW.—

11 “(A) IN GENERAL.—If the Administrator
12 appoints the Administrator as conservator or
13 receiver under paragraph (4), the insured State
14 depository institution may, within 30 days of
15 such appointment, bring an action in the Unit-
16 ed States district court for the judicial district
17 in which the home office of such institution is
18 located, or in the United States District Court
19 for the District of Columbia, for an order re-
20 quiring the Administrator to rescind the ap-
21 pointment.

22 “(B) COURT ACTION.—The court shall,
23 upon the merits, dismiss the action or direct the
24 Administrator to rescind the appointment.

1 “(8) REPLACEMENT OF CONSERVATOR OF
2 STATE DEPOSITORY INSTITUTION.—

3 “(A) IN GENERAL.—In the case of any in-
4 sured State depository institution for which the
5 Administrator appointed the Administrator as
6 conservator pursuant to paragraph (4), the Ad-
7 ministrators may, without any requirement of
8 notice, hearing, or other action, rescind the ap-
9 pointment and appoint the Administrator as re-
10 ceiver of such institution.

11 “(B) REPLACEMENT TREATED AS RE-
12 MOVAL OF INCUMBENT.—The replacement of a
13 conservator with a receiver under subparagraph
14 (A) shall be treated as the removal of the Agen-
15 cy as conservator.

16 “(C) RIGHT OF REVIEW OF ORIGINAL AP-
17 POINTMENT NOT AFFECTED.—The replacement
18 of a conservator with a receiver under subpara-
19 graph (A) shall not affect any right of the in-
20 sured State depository institution to obtain re-
21 view, pursuant to paragraph (7), of the original
22 appointment of the conservator.

23 “(9) APPOINTMENT OF AGENCY TO CARRY OUT
24 PROMPT CORRECTIVE ACTION.—

1 “(A) IN GENERAL.—The appropriate Fed-
2 eral banking agency may appoint the Agency as
3 sole receiver (or, subject to paragraph (11), sole
4 conservator) of any insured State depository in-
5 stitution, after consultation with the appro-
6 priate State supervisor, if the appropriate Fed-
7 eral banking agency determines that—

8 “(i) 1 or more of the grounds speci-
9 fied in subparagraphs (K) and (L) of para-
10 graph (5) exist with respect to that institu-
11 tion; and

12 “(ii) the appointment is necessary to
13 carry out the purpose of section 38 of the
14 Federal Deposit Insurance Act.

15 “(B) NONDELEGATION.—The appropriate
16 Federal banking agency shall not delegate any
17 action under subparagraph (A).

18 “(10) AGENCY MAY BE APPOINTED BY THE
19 FDIC AS CONSERVATOR OR RECEIVER FOR INSURED
20 DEPOSITORY INSTITUTION TO PREVENT LOSS TO DE-
21 POSIT INSURANCE FUND.—The Board of Directors
22 of the Federal Deposit Insurance Corporation may
23 appoint the Administrator as sole conservator or re-
24 ceiver of an insured depository institution, after con-
25 sultation with the appropriate Federal banking agen-

1 cy and the appropriate State supervisor (if any), if
2 the Board of Directors determines that—

3 “(A) 1 or more of the grounds specified in
4 any subparagraph of paragraph (5) exist with
5 respect to the institution; and

6 “(B) the appointment is necessary to re-
7 duce—

8 “(i) the risk that the deposit insur-
9 ance fund would incur a loss with respect
10 to the insured depository institution, or

11 “(ii) any loss that the deposit insur-
12 ance fund is expected to incur with respect
13 to that institution.

14 “(11) APPROPRIATE FEDERAL BANKING AGEN-
15 CY SHALL NOT APPOINT CONSERVATOR UNDER CER-
16 TAIN PROVISIONS WITHOUT GIVING ADMINISTRATOR
17 OPPORTUNITY TO APPOINT RECEIVER.—The appro-
18 priate Federal banking agency shall not appoint a
19 conservator for an insured depository institution
20 under subparagraph (K) or (L) of paragraph (5)
21 without the Administrator’s consent unless the agen-
22 cy has given the Administrator 48 hours notice of
23 the agency’s intention to appoint the conservator
24 and the grounds for the appointment.

1 “(12) DIRECTORS NOT LIABLE FOR ACQUIESC-
2 ING IN APPOINTMENT OF CONSERVATOR OR RE-
3 CEIVER.—The members of the board of directors of
4 an insured depository institution shall not be liable
5 to the institution’s shareholders or creditors for ac-
6 quiescing in or consenting in good faith to—

7 “(A) the appointment of the Administrator
8 as conservator or receiver for that institution;
9 or

10 “(B) an acquisition or combination under
11 section 38(f)(2)(A)(iii) of the Federal Deposit
12 Insurance Act.

13 “(13) ADDITIONAL POWERS.—In any case in
14 which the Administrator is appointed conservator or
15 receiver under paragraph (4), (6), (9), or (10) for
16 any insured State depository institution—

17 “(A) subject to subparagraph (B), this sec-
18 tion shall apply to the Administrator as con-
19 servator or receiver in the same manner and to
20 the same extent as if that institution were a
21 Federal depository institution for which the Ad-
22 ministrator had been appointed conservator or
23 receiver;

24 “(B) the Administrator shall apply the law
25 of the State in which the institution is char-

1 tered insofar as that law gives the claims of de-
2 positors priority over those of other creditors or
3 claimants; and

4 “(C) the Administrator as receiver of the
5 institution may—

6 “(i) liquidate the institution in an or-
7 derly manner; and

8 “(ii) make any other disposition of
9 any matter concerning the institution, as
10 the Administrator determines is in the best
11 interests of the institution, the depositors
12 of the institution, and the Administrator.

13 “(14) FDIA DEFINITIONS.—For purposes of
14 this section, the definitions of terms in section 3 of
15 the Federal Deposit Insurance Act shall apply with
16 respect to such terms in this section.

17 “(b) POWERS AND DUTIES OF ADMINISTRATOR AS
18 CONSERVATOR OR RECEIVER.—

19 “(1) RULEMAKING AUTHORITY OF ADMINIS-
20 TRATOR.—The Administrator may prescribe such
21 regulations as the Administrator determines to be
22 appropriate regarding the conduct of
23 conservatorships or receiverships.

24 “(2) GENERAL POWERS.—

1 “(A) SUCCESSOR TO INSTITUTION.—The
2 Administrator shall, as conservator or receiver,
3 and by operation of law, succeed to—

4 “(i) all rights, titles, powers, and
5 privileges of the insured depository institu-
6 tion, and of any stockholder, member,
7 accountholder, depositor, officer, or direc-
8 tor of such institution with respect to the
9 institution and the assets of the institu-
10 tion; and

11 “(ii) title to the books, records, and
12 assets of any previous conservator or other
13 legal custodian of such institution.

14 “(B) OPERATE THE INSTITUTION.—The
15 Administrator may (subject to the provisions of
16 section 42 of the Federal Deposit Insurance
17 Act), as conservator or receiver—

18 “(i) take over the assets of and oper-
19 ate the insured depository institution with
20 all the powers of the members or share-
21 holders, the directors, and the officers of
22 the institution and conduct all business of
23 the institution;

24 “(ii) collect all obligations and money
25 due the institution;

1 “(iii) perform all functions of the in-
2 stitution in the name of the institution
3 which is consistent with the appointment
4 as conservator or receiver; and

5 “(iv) preserve and conserve the assets
6 and property of such institution.

7 “(C) FUNCTIONS OF INSTITUTION’S OFFI-
8 CERS, DIRECTORS, AND SHAREHOLDERS.—The
9 Administrator may, by regulation or order, pro-
10 vide for the exercise of any function by any
11 member or stockholder, director, or officer of
12 any insured depository institution for which the
13 Administrator has been appointed conservator
14 or receiver.

15 “(D) POWERS AS CONSERVATOR.—The
16 Administrator may, as conservator, take such
17 action as may be—

18 “(i) necessary to put the insured de-
19 pository institution in a sound and solvent
20 condition; and

21 “(ii) appropriate to carry on the busi-
22 ness of the institution and preserve and
23 conserve the assets and property of the in-
24 stitution.

1 “(E) ADDITIONAL POWERS AS RE-
2 CEIVER.—The Administrator may (subject to
3 the provisions of section 40 of the Federal De-
4 posit Insurance Act), as receiver, place the in-
5 sured depository institution in liquidation and
6 proceed to realize upon the assets of the institu-
7 tion, having due regard to the conditions of
8 credit in the locality.

9 “(F) ORGANIZATION OF NEW INSTITU-
10 TIONS.—The Administrator may, as receiver—

11 “(i) with respect to any insured sav-
12 ings association and by application to the
13 Director of the Office of Thrift Super-
14 vision, organize a new Federal savings as-
15 sociation to take over such assets or such
16 liabilities as the Administrator may deter-
17 mine to be appropriate; and

18 “(ii) with respect to any insured bank,
19 organize a new national bank under sub-
20 section (h) or a bridge bank under sub-
21 section (i).

22 “(G) MERGER; TRANSFER OF ASSETS AND
23 LIABILITIES.—

24 “(i) IN GENERAL.—The Administrator
25 may, as conservator or receiver—

1 “(I) merge the insured depository
2 institution with another insured de-
3 pository institution; or

4 “(II) subject to clause (ii), trans-
5 fer any asset or liability of the institu-
6 tion in default (including assets and
7 liabilities associated with any trust
8 business) without any approval, as-
9 signment, or consent with respect to
10 such transfer.

11 “(ii) APPROVAL BY APPROPRIATE
12 FEDERAL BANKING AGENCY.—No transfer
13 described in clause (i)(II) may be made to
14 another depository institution (other than
15 a new bank or a bridge bank established
16 pursuant to subsection (h) or (i)) without
17 the approval of the appropriate Federal
18 banking agency for such institution.

19 “(H) PAYMENT OF VALID OBLIGATIONS.—
20 The Administrator, as conservator or receiver,
21 shall pay all valid obligations of the insured de-
22 pository institution in accordance with the pre-
23 scriptions and limitations of this Act.

24 “(I) SUBPOENA AUTHORITY.—

1 “(i) IN GENERAL.—The Administrator
2 may, as conservator, receiver, or exclusive
3 manager and for purposes of carrying out
4 any power, authority, or duty with respect
5 to an insured depository institution (in-
6 cluding determining any claim against the
7 institution and determining and realizing
8 upon any asset of any person in the course
9 of collecting money due the institution), ex-
10 ercise any power established under section
11 21A(b)(5), and the provisions of such sec-
12 tion shall apply with respect to the exercise
13 of any such power under this subpara-
14 graph in the same manner as such provi-
15 sions apply under such section.

16 “(ii) AUTHORITY OF ADMINIS-
17 TRATOR.—A subpoena or subpoena duces
18 tecum may be issued under clause (i) only
19 by, or with the written approval of, the Ad-
20 ministrator or the Administrator’s des-
21 ignee.

22 “(iii) RULE OF CONSTRUCTION.—This
23 subsection shall not be construed as limit-
24 ing any rights that the Administrator, in

1 any capacity, might otherwise have under
2 section 21A(b)(4).

3 “(J) INCIDENTAL POWERS.—The Adminis-
4 trator may, as conservator or receiver—

5 “(i) exercise all powers and authori-
6 ties specifically granted to conservators or
7 receivers, respectively, under this Act and
8 such incidental powers as shall be nec-
9 essary to carry out such powers; and

10 “(ii) take any action authorized by
11 this Act,

12 which the Administrator determines is in the
13 best interests of the depository institution, the
14 institution’s depositors, or the Administrator.

15 “(K) UTILIZATION OF PRIVATE SECTOR.—
16 In managing and disposing of assets from in-
17 sured depository institutions, as conservator, re-
18 ceiver, or as an agency, the Administrator shall
19 utilize the services of private persons, including
20 real estate and loan portfolio asset manage-
21 ment, property management, auction market-
22 ing, and brokerage services, if such services are
23 available in the private sector and the Adminis-
24 trator determines utilization of such services is
25 practicable, efficient, and cost effective.

1 “(3) AUTHORITY OF RECEIVER TO DETERMINE
2 CLAIMS.—

3 “(A) IN GENERAL.—The Administrator
4 may, as receiver, determine claims in accord-
5 ance with the requirements of this subsection
6 and regulations prescribed under paragraph (4).

7 “(B) NOTICE REQUIREMENTS.—The re-
8 ceiver, in any case involving the liquidation or
9 winding up of the affairs of a closed depository
10 institution, shall—

11 “(i) promptly publish a notice to the
12 depository institution’s creditors to present
13 their claims, together with proof, to the re-
14 ceiver by a date specified in the notice
15 which shall be not less than 90 days after
16 the publication of such notice; and

17 “(ii) republish such notice approxi-
18 mately 1 month and 2 months, respec-
19 tively, after the publication under clause
20 (i).

21 “(C) MAILING REQUIRED.—The receiver
22 shall mail a notice similar to the notice pub-
23 lished under subparagraph (B)(i) at the time of
24 such publication to any creditor shown on the
25 institution’s books—

1 “(i) at the creditor’s last address ap-
2 pearing in such books; or

3 “(ii) upon discovery of the name and
4 address of a claimant not appearing on the
5 institution’s books within 30 days after the
6 discovery of such name and address.

7 “(4) RULEMAKING AUTHORITY RELATING TO
8 DETERMINATION OF CLAIMS.—

9 “(A) IN GENERAL.—The Administrator
10 may prescribe regulations regarding the allow-
11 ance or disallowance of claims by the receiver
12 and providing for administrative determinations
13 of claims and review of such determination.

14 “(B) FINAL SETTLEMENT PAYMENT PRO-
15 CEDURE.—

16 “(i) IN GENERAL.—In the handling of
17 receiverships of insured depository institu-
18 tions, to maintain essential liquidity and to
19 prevent financial disruption, the Adminis-
20 trator may, after the declaration of an in-
21 stitution’s insolvency, settle all uninsured
22 and unsecured claims on the receivership
23 with a final settlement payment which
24 shall constitute full payment and disposi-

1 tion of the Administrator’s obligations to
2 such claimants.

3 “(ii) FINAL SETTLEMENT PAY-
4 MENT.—For purposes of clause (i), a final
5 settlement payment shall be payment of an
6 amount equal to the product of the final
7 settlement payment rate and the amount
8 of the uninsured and unsecured claim on
9 the receivership.

10 “(iii) FINAL SETTLEMENT PAYMENT
11 RATE.—For purposes of clause (ii), the
12 final settlement payment rate shall be a
13 percentage rate reflecting an average of
14 the Administrator’s receivership recovery
15 experience, determined by the Adminis-
16 trator in such a way that over such time
17 period as the Administrator may determine
18 to be appropriate, the Administrator in
19 total will receive no more or less than the
20 Administrator would have received in total
21 as a general creditor standing in the place
22 of insured depositors in each specific re-
23 ceivership.

24 “(iv) AUTHORITY OF ADMINIS-
25 TRATOR.—The Administrator may under-

1 take such supervisory actions and prescribe
2 such regulations as may be necessary to
3 assure that the requirements of this sec-
4 tion can be implemented with respect to
5 each insured depository institution in the
6 event of its insolvency.

7 “(5) PROCEDURES FOR DETERMINATION OF
8 CLAIMS.—

9 “(A) DETERMINATION PERIOD.—

10 “(i) IN GENERAL.—Before the end of
11 the 180-day period beginning on the date
12 any claim against a depository institution
13 is filed with the Administrator as receiver,
14 the Administrator shall determine whether
15 to allow or disallow the claim and shall no-
16 tify the claimant of any determination with
17 respect to such claim.

18 “(ii) EXTENSION OF TIME.—The pe-
19 riod described in clause (i) may be ex-
20 tended by a written agreement between the
21 claimant and the Administrator.

22 “(iii) MAILING OF NOTICE SUFFI-
23 CIENT.—The requirements of clause (i)
24 shall be deemed to be satisfied if the notice
25 of any determination with respect to any

1 claim is mailed to the last address of the
2 claimant which appears—

3 “(I) on the depository institu-
4 tion’s books;

5 “(II) in the claim filed by the
6 claimant; or

7 “(III) in documents submitted in
8 proof of the claim.

9 “(iv) CONTENTS OF NOTICE OF DIS-
10 ALLOWANCE.—If any claim filed under
11 clause (i) is disallowed, the notice to the
12 claimant shall contain—

13 “(I) a statement of each reason
14 for the disallowance; and

15 “(II) the procedures available for
16 obtaining agency review of the deter-
17 mination to disallow the claim or judi-
18 cial determination of the claim.

19 “(B) ALLOWANCE OF PROVEN CLAIMS.—

20 The receiver shall allow any claim received on
21 or before the date specified in the notice pub-
22 lished under paragraph (3)(B)(i) by the receiver
23 from any claimant which is proved to the satis-
24 faction of the receiver.

1 “(C) DISALLOWANCE OF CLAIMS FILED
2 AFTER END OF FILING PERIOD.—

3 “(i) IN GENERAL.—Except as pro-
4 vided in clause (ii), claims filed after the
5 date specified in the notice published under
6 paragraph (3)(B)(i) shall be disallowed
7 and such disallowance shall be final.

8 “(ii) CERTAIN EXCEPTIONS.—Clause
9 (i) shall not apply with respect to any
10 claim filed by any claimant after the date
11 specified in the notice published under
12 paragraph (3)(B)(i) and such claim may
13 be considered by the receiver if—

14 “(I) the claimant did not receive
15 notice of the appointment of the re-
16 ceiver in time to file such claim before
17 such date; and

18 “(II) such claim is filed in time
19 to permit payment of such claim.

20 “(D) AUTHORITY TO DISALLOW CLAIMS.—

21 “(i) IN GENERAL.—The receiver may
22 disallow any portion of any claim by a
23 creditor or claim of security, preference, or
24 priority which is not proved to the satisfac-
25 tion of the receiver.

1 “(ii) PAYMENTS TO LESS THAN
2 FULLY SECURED CREDITORS.—In the case
3 of a claim of a creditor against an insured
4 depository institution which is secured by
5 any property or other asset of such institu-
6 tion, any receiver appointed for any in-
7 sured depository institution—

8 “(I) may treat the portion of
9 such claim which exceeds an amount
10 equal to the fair market value of such
11 property or other asset as an unse-
12 cured claim against the institution;
13 and

14 “(II) may not make any payment
15 with respect to such unsecured por-
16 tion of the claim other than in connec-
17 tion with the disposition of all claims
18 of unsecured creditors of the institu-
19 tion.

20 “(iii) EXCEPTIONS.—No provision of
21 this paragraph shall apply with respect
22 to—

23 “(I) any extension of credit from
24 any Federal home loan bank or Fed-

1 eral Reserve bank to any insured de-
2 pository institution; or

3 “(II) any security interest in the
4 assets of the institution securing any
5 such extension of credit.

6 “(E) NO JUDICIAL REVIEW OF DETER-
7 MINATION PURSUANT TO SUBPARAGRAPH (D).—
8 No court may review the Administrator’s deter-
9 mination pursuant to subparagraph (D) to dis-
10 allow a claim.

11 “(F) LEGAL EFFECT OF FILING.—

12 “(i) STATUTE OF LIMITATION
13 TOLLED.—For purposes of any applicable
14 statute of limitations, the filing of a claim
15 with the receiver shall constitute a com-
16 mencement of an action.

17 “(ii) NO PREJUDICE TO OTHER AC-
18 TIONS.—Subject to paragraph (12), the fil-
19 ing of a claim with the receiver shall not
20 prejudice any right of the claimant to con-
21 tinue any action which was filed before the
22 appointment of the receiver.

23 “(6) PROVISION FOR AGENCY REVIEW OR JUDI-
24 CIAL DETERMINATION OF CLAIMS.—

1 “(A) IN GENERAL.—Before the end of the
2 60-day period beginning on the earlier of—

3 “(i) the end of the period described in
4 paragraph (5)(A)(i) with respect to any
5 claim against a depository institution for
6 which the Administrator is receiver; or

7 “(ii) the date of any notice of dis-
8 allowance of such claim pursuant to para-
9 graph (5)(A)(i),

10 the claimant may request administrative review
11 of the claim in accordance with subparagraph
12 (A) or (B) of paragraph (7) or file suit on such
13 claim (or continue an action commenced before
14 the appointment of the receiver) in the district
15 or territorial court of the United States for the
16 district within which the depository institution’s
17 principal place of business is located or the
18 United States District Court for the District of
19 Columbia (and such court shall have jurisdic-
20 tion to hear such claim).

21 “(B) STATUTE OF LIMITATIONS.—If any
22 claimant fails to—

23 “(i) request administrative review of
24 any claim in accordance with subparagraph
25 (A) or (B) of paragraph (7); or

1 “(ii) file suit on such claim (or con-
2 tinue an action commenced before the ap-
3 pointment of the receiver),
4 before the end of the 60-day period described in
5 subparagraph (A), the claim shall be deemed to
6 be disallowed (other than any portion of such
7 claim which was allowed by the receiver) as of
8 the end of such period, such disallowance shall
9 be final, and the claimant shall have no further
10 rights or remedies with respect to such claim.

11 “(7) REVIEW OF CLAIMS.—

12 “(A) ADMINISTRATIVE HEARING.—

13 “(i) IN GENERAL.—If any claimant
14 requests review under this subparagraph in
15 lieu of filing or continuing any action
16 under paragraph (6) and the Adminis-
17 trator agrees to such request, the Adminis-
18 trator shall consider the claim after oppor-
19 tunity for a hearing on the record.

20 “(ii) JUDICIAL REVIEW.—The final
21 determination of the Administrator with
22 respect to a claim considered under clause
23 (i) shall be subject to judicial review under
24 chapter 7 of title 5, United States Code.

25 “(B) OTHER REVIEW PROCEDURES.—

1 “(i) IN GENERAL.—The Administrator
2 shall also establish such alternative dispute
3 resolution processes as may be appropriate
4 for the resolution of claims filed under
5 paragraph (5)(A)(i).

6 “(ii) CRITERIA.—In establishing alter-
7 native dispute resolution processes, the Ad-
8 ministrator shall strive for procedures
9 which are expeditious, fair, independent,
10 and low-cost.

11 “(iii) VOLUNTARY BINDING OR
12 NONBINDING PROCEDURES.—The Adminis-
13 trator may establish both binding and
14 nonbinding processes, which may be con-
15 ducted by any government or private party,
16 but all parties, including the claimant and
17 the Administrator, shall agree to the use of
18 the process in a particular case.

19 “(iv) CONSIDERATION OF INCEN-
20 TIVES.—The Administrator shall seek to
21 develop incentives for claimants to partici-
22 pate in the alternative dispute resolution
23 process.

24 “(8) EXPEDITED DETERMINATION OF
25 CLAIMS.—

1 “(A) ESTABLISHMENT REQUIRED.—The
2 Administrator shall establish a procedure for
3 expedited relief outside of the routine claims
4 process established under paragraph (5) for
5 claimants who—

6 “(i) allege the existence of legally
7 valid and enforceable or perfected security
8 interests in assets of any depository insti-
9 tution for which the Administrator has
10 been appointed receiver; and

11 “(ii) allege that irreparable injury will
12 occur if the routine claims procedure is fol-
13 lowed.

14 “(B) DETERMINATION PERIOD.—Before
15 the end of the 90-day period beginning on the
16 date any claim is filed in accordance with the
17 procedures established pursuant to subpara-
18 graph (A), the Administrator shall—

19 “(i) determine—

20 “(I) whether to allow or disallow
21 such claim; or

22 “(II) whether such claim should
23 be determined pursuant to the proce-
24 dures established pursuant to para-
25 graph (5);

1 “(ii) notify the claimant of the deter-
2 mination; and

3 “(iii) if the claim is disallowed, pro-
4 vide—

5 “(I) a written explanation of each
6 reason for the disallowance; and

7 “(II) a written description of the
8 procedure for obtaining agency review
9 of the determination or judicial deter-
10 mination of the claim.

11 “(C) PERIOD FOR FILING OR RENEWING
12 SUIT.—Any claimant who files a request for ex-
13 pedited relief shall be permitted to file a suit,
14 or to continue a suit filed before the appoint-
15 ment of the receiver, seeking a determination of
16 the claimant’s rights with respect to such secu-
17 rity interest after the earlier of—

18 “(i) the end of the 90-day period be-
19 ginning on the date of the filing of a re-
20 quest for expedited relief; or

21 “(ii) the date the Administrator de-
22 nies the claim.

23 “(D) STATUTE OF LIMITATIONS.—If an
24 action described in subparagraph (C) is not
25 filed, or the motion to renew a previously filed

1 suit is not made, before the end of the 30-day
2 period beginning on the date on which such ac-
3 tion or motion may be filed in accordance with
4 subparagraph (B), the claim shall be deemed to
5 be disallowed as of the end of such period
6 (other than any portion of such claim which
7 was allowed by the receiver), such disallowance
8 shall be final, and the claimant shall have no
9 further rights or remedies with respect to such
10 claim.

11 “(E) LEGAL EFFECT OF FILING.—

12 “(i) STATUTE OF LIMITATION
13 TOLLED.—For purposes of any applicable
14 statute of limitations, the filing of a claim
15 with the receiver shall constitute a com-
16 mencement of an action.

17 “(ii) NO PREJUDICE TO OTHER AC-
18 TIONS.—Subject to paragraph (12), the fil-
19 ing of a claim with the receiver shall not
20 prejudice any right of the claimant to con-
21 tinue any action which was filed before the
22 appointment of the receiver.

23 “(9) AGREEMENT AS BASIS OF CLAIM.—

24 “(A) AGREEMENTS AGAINST INTERESTS
25 OF ADMINISTRATOR.—No agreement which

1 tends to diminish or defeat the interest of the
2 Agency in any asset acquired by the Agency
3 under this section, either as security for a loan
4 or by purchase or as receiver of any insured de-
5 pository institution, shall be valid against the
6 Agency or form the basis of, or substantially
7 comprise, a claim against the receiver or the
8 Agency unless such agreement—

9 “(i) is in writing;

10 “(ii) was executed by the depository
11 institution and any person claiming an ad-
12 verse interest under the agreement, includ-
13 ing the obligor, contemporaneously with
14 the acquisition of the asset by the deposi-
15 tory institution;

16 “(iii) was approved by the board of di-
17 rectors of the depository institution or the
18 institution’s loan committee, and the ap-
19 proval is reflected in the minutes of such
20 board of directors or committee; and

21 “(iv) has been, continuously, from the
22 time of the execution of the agreement, an
23 official record of the depository institution.

24 “(B) EXCEPTION TO CONTEMPORANEOUS
25 EXECUTION REQUIREMENT.—Notwithstanding

1 section 21D(e)(2), any agreement relating to an
2 extension of credit between a Federal home loan
3 bank or Federal Reserve bank and any insured
4 depository institution which was executed before
5 the extension of credit by such bank to such in-
6 stitution shall be treated as having been exe-
7 cuted contemporaneously with such extension of
8 credit for purposes of subparagraph (A).

9 “(10) PAYMENT OF CLAIMS.—

10 “(A) IN GENERAL.—The receiver may, in
11 the receiver’s discretion and to the extent funds
12 are available, pay creditor claims which are al-
13 lowed by the receiver, approved by the Adminis-
14 trator pursuant to a final determination pursu-
15 ant to paragraph (7) or (8), or determined by
16 the final judgment of any court of competent
17 jurisdiction in such manner and amounts as are
18 authorized under this Act.

19 “(B) PAYMENT OF DIVIDENDS ON
20 CLAIMS.—The receiver may, in the receiver’s
21 sole discretion, pay dividends on proved claims
22 at any time, and no liability shall attach to the
23 Administrator (in such Administrator’s capacity
24 as an agency or receiver), by reason of any such
25 payment, for failure to pay dividends to a

1 claimant whose claim is not proved at the time
2 of any such payment.

3 “(11) DISTRIBUTION OF ASSETS.—

4 “(A) SUBROGATED CLAIMS; CLAIMS OF
5 UNINSURED DEPOSITORS AND OTHER CREDI-
6 TORS.—The receiver shall—

7 “(i) retain for the account of the Fed-
8 eral Deposit Insurance Corporation such
9 portion of the amounts realized from any
10 liquidation as may be necessary to satisfy
11 the claim of the Corporation under section
12 11(g) of the Federal Deposit Insurance
13 Act; and

14 “(ii) pay to depositors and other
15 creditors the net amounts available for dis-
16 tribution to them.

17 “(B) DISTRIBUTION TO SHAREHOLDERS
18 OF AMOUNTS REMAINING AFTER PAYMENT OF
19 ALL OTHER CLAIMS AND EXPENSES.—In any
20 case in which funds remain after all depositors,
21 creditors, other claimants, and administrative
22 expenses are paid, the receiver shall distribute
23 such funds to the depository institution’s share-
24 holders or members together with the account-
25 ing report required under paragraph (15)(B).

1 “(12) SUSPENSION OF LEGAL ACTIONS.—

2 “(A) IN GENERAL.—After the appointment
3 of a conservator or receiver for an insured de-
4 pository institution, the conservator or receiver
5 may request a stay for a period not to exceed—

6 “(i) 45 days, in the case of any con-
7 servator; and

8 “(ii) 90 days, in the case of any re-
9 ceiver,
10 in any judicial action or proceeding to which
11 such institution is or becomes a party.

12 “(B) GRANT OF STAY BY ALL COURTS RE-
13 QUIRED.—Upon receipt of a request by any
14 conservator or receiver pursuant to subpara-
15 graph (A) for a stay of any judicial action or
16 proceeding in any court with jurisdiction of
17 such action or proceeding, the court shall grant
18 such stay as to all parties.

19 “(13) ADDITIONAL RIGHTS AND DUTIES.—

20 “(A) PRIOR FINAL ADJUDICATION.—The
21 Administrator shall abide by any final judgment
22 of any court of competent jurisdiction which
23 was rendered before the appointment of the Ad-
24 ministrator as conservator or receiver.

1 “(B) RIGHTS AND REMEDIES OF CON-
2 SERVATOR OR RECEIVER.—In the event of any
3 appealable judgment, the Administrator as con-
4 servator or receiver shall—

5 “(i) have all the rights and remedies
6 available to the insured depository institu-
7 tion (before the appointment of such con-
8 servator or receiver) and the Administrator
9 in its capacity as an agency, including re-
10 moval to Federal court and all appellate
11 rights; and

12 “(ii) not be required to post any bond
13 in order to pursue such remedies.

14 “(C) NO ATTACHMENT OR EXECUTION.—
15 No attachment or execution may issue by any
16 court upon assets in the possession of the re-
17 ceiver.

18 “(D) LIMITATION ON JUDICIAL REVIEW.—
19 Except as otherwise provided in this subsection,
20 no court shall have jurisdiction over—

21 “(i) any claim or action for payment
22 from, or any action seeking a determina-
23 tion of rights with respect to, the assets of
24 any depository institution for which the
25 Administrator has been appointed receiver,

1 including assets which the Administrator
2 may acquire from itself as such receiver; or

3 “(ii) any claim relating to any act or
4 omission of such institution or the Admin-
5 istrator as receiver.

6 “(E) DISPOSITION OF ASSETS.—In exercis-
7 ing any right, power, privilege, or authority as
8 conservator or receiver in connection with any
9 sale or disposition of assets of any insured de-
10 pository institution for which the Administrator
11 has been appointed conservator or receiver, in-
12 cluding any sale or disposition of assets ac-
13 quired by the Administrator under paragraph
14 (14), the Administrator shall conduct the oper-
15 ations of the Agency in a manner which—

16 “(i) maximizes the net present value
17 return from the sale or disposition of such
18 assets;

19 “(ii) minimizes the amount of any loss
20 realized in the resolution of cases;

21 “(iii) ensures adequate competition
22 and fair and consistent treatment of
23 offerors;

1 “(iv) prohibits discrimination on the
2 basis of race, sex, or ethnic groups in the
3 solicitation and consideration of offers; and

4 “(v) maximizes the preservation of the
5 availability and affordability of residential
6 real property for low- and moderate-income
7 individuals.

8 “(14) STATUTE OF LIMITATIONS FOR ACTIONS
9 BROUGHT BY CONSERVATOR OR RECEIVER.—

10 “(A) IN GENERAL.—Notwithstanding any
11 provision of any contract, the applicable statute
12 of limitations with regard to any action brought
13 by the Administrator as conservator or receiver
14 shall be—

15 “(i) in the case of any contract claim,
16 the longer of—

17 “(I) the 6-year period beginning
18 on the date the claim accrues; or

19 “(II) the period applicable under
20 State law; and

21 “(ii) in the case of any tort claim, the
22 longer of—

23 “(I) the 3-year period beginning
24 on the date the claim accrues; or

1 “(II) the period applicable under
2 State law.

3 “(B) DETERMINATION OF THE DATE ON
4 WHICH A CLAIM ACCRUES.—For purposes of
5 subparagraph (A), the date on which the stat-
6 ute of limitation begins to run on any claim de-
7 scribed in such subparagraph shall be the later
8 of—

9 “(i) the date of the appointment of
10 the Administrator as conservator or re-
11 ceiver; or

12 “(ii) the date on which the cause of
13 action accrues.

14 “(15) ACCOUNTING AND RECORDKEEPING RE-
15 QUIREMENTS.—

16 “(A) IN GENERAL.—The Administrator as
17 conservator or receiver shall, consistent with the
18 accounting and reporting practices and proce-
19 dures established by the Administrator, main-
20 tain a full accounting of each conservatorship
21 and receivership or other disposition of institu-
22 tions in default.

23 “(B) ANNUAL ACCOUNTING OR REPORT.—
24 With respect to each conservatorship or receiv-
25 ership to which the Administrator was ap-

1 pointed, the Administrator shall make an an-
2 nual accounting or report, as appropriate, avail-
3 able to the Secretary of the Treasury, the
4 Comptroller General of the United States, and
5 the authority which appointed the Adminis-
6 trator as conservator or receiver.

7 “(C) AVAILABILITY OF REPORTS.—Any re-
8 port prepared pursuant to subparagraph (B)
9 shall be made available by the Administrator
10 upon request to any shareholder of the deposi-
11 tory institution for which the Administrator was
12 appointed conservator or receiver or any other
13 member of the public.

14 “(D) RECORDKEEPING REQUIREMENT.—
15 After the end of the 6-year period beginning on
16 the date the Administrator is appointed as re-
17 ceiver of an insured depository institution, the
18 Administrator may destroy any records of such
19 institution which the Administrator, in the Ad-
20 ministrator’s discretion, determines to be un-
21 necessary unless—

22 “(i) the Administrator is directed not
23 to do so by a court of competent jurisdic-
24 tion or governmental agency; or

1 “(ii) the destruction of such record is
2 prohibited by law.

3 “(16) CONTRACTS WITH STATE HOUSING FI-
4 NANCE AUTHORITIES.—

5 “(A) IN GENERAL.—The Administrator
6 may enter into contracts with any State hous-
7 ing finance authority for the sale of mortgage-
8 related assets (as such terms are defined in sec-
9 tion 1301 of the Financial Institutions Reform,
10 Recovery, and Enforcement Act of 1989) of any
11 depository institution in default (including as-
12 sets and liabilities associated with any trust
13 business), such contracts to be effective in ac-
14 cordance with their terms without any further
15 approval, assignment, or consent with respect
16 thereto.

17 “(B) FACTORS TO CONSIDER.—In evaluat-
18 ing the disposition of mortgage-related assets to
19 any State housing finance authority the Admin-
20 istrator shall consider—

21 “(i) the State housing finance
22 authority’s ability to acquire and service
23 current, delinquent, and defaulted mort-
24 gage related assets;

1 “(ii) the State housing finance
2 authority’s ability to further national hous-
3 ing policies;

4 “(iii) the State housing finance
5 authority’s sensitivity to the impact of the
6 sale of mortgage related assets upon the
7 State and local communities;

8 “(iv) the costs to the Federal Govern-
9 ment associated with alternative ownership
10 or dispositions of the mortgage related as-
11 sets;

12 “(v) the minimization of future guar-
13 anties which may be required of the Fed-
14 eral Government;

15 “(vi) the maximization of mortgage
16 related asset values; and

17 “(vii) the utilization of institutions
18 currently established in mortgage related
19 asset market activities.

20 “(17) FRAUDULENT TRANSFERS.—

21 “(A) IN GENERAL.—The Administrator, as
22 conservator or receiver for any insured deposi-
23 tory institution, and any conservator appointed
24 by the Comptroller of the Currency or the Di-
25 rector of the Office of Thrift Supervision may

1 avoid a transfer of any interest of an institu-
2 tion-affiliated party, or any person who the Ad-
3 ministrator or conservator determines is a debt-
4 or of the institution, in property, or any obliga-
5 tion incurred by such party or person, that was
6 made within 5 years of the date on which the
7 Administrator or conservator was appointed
8 conservator or receiver if such party or person
9 voluntarily or involuntarily made such transfer
10 or incurred such liability with the intent to
11 hinder, delay, or defraud the insured depository
12 institution, the Administrator or other con-
13 servator, or any other appropriate Federal
14 banking agency.

15 “(B) RIGHT OF RECOVERY.—To the extent
16 a transfer is avoided under subparagraph (A),
17 the Administrator or any conservator described
18 in such subparagraph may recover, for the ben-
19 efit of the insured depository institution, the
20 property transferred, or, if a court so orders,
21 the value of such property (at the time of such
22 transfer) from—

23 “(i) the initial transferee of such
24 transfer or the institution-affiliated party

1 or person for whose benefit such transfer
2 was made; or

3 “(ii) any immediate or mediate trans-
4 feree of any such initial transferee.

5 “(C) RIGHTS OF TRANSFEREE OR OBLI-
6 GEE.—The Administrator or any conservator
7 described in subparagraph (A) may not recover
8 under subparagraph (B) from—

9 “(i) any transferee that takes for
10 value, including satisfaction or securing of
11 a present or antecedent debt, in good faith;
12 or

13 “(ii) any immediate or mediate good
14 faith transferee of such transferee.

15 “(D) RIGHTS UNDER THIS PARAGRAPH.—
16 The rights under this paragraph of the Admin-
17 istrator and any conservator described in sub-
18 paragraph (A) shall be superior to any rights of
19 a trustee or any other party (other than any
20 party which is a Federal agency) under title 11,
21 United States Code.

22 “(18) ATTACHMENT OF ASSETS AND OTHER IN-
23 JUNCTIVE RELIEF.—Subject to paragraph (19), any
24 court of competent jurisdiction may, at the request
25 of—

1 “(A) the Administrator (in the Administra-
2 tor’s capacity as conservator or receiver for any
3 insured depository institution or in the Admin-
4 istrator’s capacity as an agency with respect to
5 any asset acquired by, or liability assumed by,
6 the Administrator under this section, section
7 21D of this Act, or section 13 of the Federal
8 Deposit Insurance Act); or

9 “(B) any conservator appointed by the
10 Comptroller of the Currency or the Director of
11 the Office of Thrift Supervision,

12 issue an order in accordance with Rule 65 of the
13 Federal Rules of Civil Procedure, including an order
14 placing the assets of any person designated by the
15 Administrator or such conservator under the control
16 of the court and appointing a trustee to hold such
17 assets.

18 “(19) STANDARDS.—

19 “(A) SHOWING.—Rule 65 of the Federal
20 Rules of Civil Procedure shall apply with re-
21 spect to any proceeding under paragraph (18)
22 without regard to the requirement of such rule
23 that the applicant show that the injury, loss, or
24 damage is irreparable and immediate.

1 “(B) STATE PROCEEDING.—If, in the case
2 of any proceeding in a State court, the court
3 determines that rules of civil procedure avail-
4 able under the laws of such State provide sub-
5 stantially similar protections to such party’s
6 right to due process as Rule 65 (as modified
7 with respect to such proceeding by subpara-
8 graph (A)), the relief sought by the Adminis-
9 trator or a conservator pursuant to paragraph
10 (18) may be requested under the laws of such
11 State.

12 “(c) PROVISIONS RELATING TO CONTRACTS EN-
13 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR
14 OR RECEIVER.—

15 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—
16 In addition to any other rights a conservator or re-
17 ceiver may have, the conservator or receiver for any
18 insured depository institution may disaffirm or repu-
19 diate any contract or lease—

20 “(A) to which such institution is a party;

21 “(B) the performance of which the con-
22 servator or receiver, in the conservator’s or re-
23 ceiver’s discretion, determines to be burden-
24 some; and

1 “(C) the disaffirmance or repudiation of
2 which the conservator or receiver determines, in
3 the conservator’s or receiver’s discretion, will
4 promote the orderly administration of the insti-
5 tution’s affairs.

6 “(2) TIMING OF REPUDIATION.—The conserva-
7 tor or receiver appointed for any insured depository
8 institution in accordance with subsection (a) shall
9 determine whether or not to exercise the rights of
10 repudiation under this subsection within a reason-
11 able period following such appointment.

12 “(3) CLAIMS FOR DAMAGES FOR REPUDI-
13 ATION.—

14 “(A) IN GENERAL.—Except as otherwise
15 provided in subparagraph (C) and paragraphs
16 (4), (5), and (6), the liability of the conservator
17 or receiver for the disaffirmance or repudiation
18 of any contract pursuant to paragraph (1) shall
19 be—

20 “(i) limited to actual direct compen-
21 satory damages; and

22 “(ii) determined as of—

23 “(I) the date of the appointment
24 of the conservator or receiver; or

1 “(II) in the case of any contract
2 or agreement referred to in paragraph
3 (8), the date of the disaffirmance or
4 repudiation of such contract or agree-
5 ment.

6 “(B) NO LIABILITY FOR OTHER DAM-
7 AGES.—For purposes of subparagraph (A), the
8 term ‘actual direct compensatory damages’ does
9 not include—

10 “(i) punitive or exemplary damages;

11 “(ii) damages for lost profits or op-
12 portunity; or

13 “(iii) damages for pain and suffering.

14 “(C) MEASURE OF DAMAGES FOR REPUDI-
15 ATION OF FINANCIAL CONTRACTS.—In the case
16 of any qualified financial contract or agreement
17 to which paragraph (8) applies, compensatory
18 damages shall be—

19 “(i) deemed to include normal and
20 reasonable costs of cover or other reason-
21 able measures of damages utilized in the
22 industries for such contract and agreement
23 claims; and

1 “(ii) paid in accordance with this sub-
2 section and subsection (g) except as other-
3 wise specifically provided in this section.

4 “(4) LEASES UNDER WHICH THE INSTITUTION
5 IS THE LESSEE.—

6 “(A) IN GENERAL.—If the conservator or
7 receiver disaffirms or repudiates a lease under
8 which the insured depository institution was the
9 lessee, the conservator or receiver shall not be
10 liable for any damages (other than damages de-
11 termined pursuant to subparagraph (B)) for the
12 disaffirmance or repudiation of such lease.

13 “(B) PAYMENTS OF RENT.—Notwithstand-
14 ing subparagraph (A), the lessor under a lease
15 to which such subparagraph applies shall—

16 “(i) be entitled to the contractual rent
17 accruing before the later of the date—

18 “(I) the notice of disaffirmance
19 or repudiation is mailed; or

20 “(II) the disaffirmance or repudi-
21 ation becomes effective,

22 unless the lessor is in default or breach of
23 the terms of the lease;

1 “(ii) have no claim for damages under
2 any acceleration clause or other penalty
3 provision in the lease; and

4 “(iii) have a claim for any unpaid
5 rent, subject to all appropriate offsets and
6 defenses, due as of the date of the appoint-
7 ment which shall be paid in accordance
8 with this subsection and subsection (i).

9 “(5) LEASES UNDER WHICH THE INSTITUTION
10 IS THE LESSOR.—

11 “(A) IN GENERAL.—If the conservator or
12 receiver repudiates an unexpired written lease
13 of real property of the insured depository insti-
14 tution under which the institution is the lessor
15 and the lessee is not, as of the date of such re-
16 pudiation, in default, the lessee under such
17 lease may either—

18 “(i) treat the lease as terminated by
19 such repudiation; or

20 “(ii) remain in possession of the lease-
21 hold interest for the balance of the term of
22 the lease unless the lessee defaults under
23 the terms of the lease after the date of
24 such repudiation.

1 “(B) PROVISIONS APPLICABLE TO LESSEE
2 REMAINING IN POSSESSION.—If any lessee
3 under a lease described in subparagraph (A) re-
4 mains in possession of a leasehold interest pur-
5 suant to clause (ii) of such subparagraph—

6 “(i) the lessee—

7 “(I) shall continue to pay the
8 contractual rent pursuant to the
9 terms of the lease after the date of
10 the repudiation of such lease;

11 “(II) may offset against any rent
12 payment which accrues after the date
13 of the repudiation of the lease, any
14 damages which accrue after such date
15 due to the nonperformance of any ob-
16 ligation of the insured depository in-
17 stitution under the lease after such
18 date; and

19 “(ii) the conservator or receiver shall
20 not be liable to the lessee for any damages
21 arising after such date as a result of the
22 repudiation other than the amount of any
23 offset allowed under clause (i)(II).

24 “(6) CONTRACTS FOR THE SALE OF REAL
25 PROPERTY.—

1 “(A) IN GENERAL.—If the conservator or
2 receiver repudiates any contract (which meets
3 the requirements of each clause of subsection
4 (b)(9)(A)) for the sale of real property and the
5 purchaser of such real property under such con-
6 tract is in possession and is not, as of the date
7 of such repudiation, in default, such purchaser
8 may either—

9 “(i) treat the contract as terminated
10 by such repudiation; or

11 “(ii) remain in possession of such real
12 property.

13 “(B) PROVISIONS APPLICABLE TO PUR-
14 CHASER REMAINING IN POSSESSION.—If any
15 purchaser of real property under any contract
16 described in subparagraph (A) remains in pos-
17 session of such property pursuant to clause (ii)
18 of such subparagraph—

19 “(i) the purchaser—

20 “(I) shall continue to make all
21 payments due under the contract after
22 the date of the repudiation of the con-
23 tract; and

24 “(II) may offset against any such
25 payments any damages which accrue

1 after such date due to the non-
2 performance (after such date) of any
3 obligation of the depository institution
4 under the contract; and

5 “(ii) the conservator or receiver
6 shall—

7 “(I) not be liable to the pur-
8 chaser for any damages arising after
9 such date as a result of the repudi-
10 ation other than the amount of any
11 offset allowed under clause (i)(II);

12 “(II) deliver title to the pur-
13 chaser in accordance with the provi-
14 sions of the contract; and

15 “(III) have no obligation under
16 the contract other than the perform-
17 ance required under subclause (II).

18 “(C) ASSIGNMENT AND SALE ALLOWED.—

19 “(i) IN GENERAL.—No provision of
20 this paragraph shall be construed as limit-
21 ing the right of the conservator or receiver
22 to assign the contract described in sub-
23 paragraph (A) and sell the property sub-
24 ject to the contract and the provisions of
25 this paragraph.

1 “(ii) NO LIABILITY AFTER ASSIGN-
2 MENT AND SALE.—If an assignment and
3 sale described in clause (i) is con-
4 summated, the conservator or receiver
5 shall have no further liability under the
6 contract described in subparagraph (A) or
7 with respect to the real property which was
8 the subject of such contract.

9 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
10 TRACTS.—

11 “(A) SERVICES PERFORMED BEFORE AP-
12 POINTMENT.—In the case of any contract for
13 services between any person and any insured
14 depository institution for which the Adminis-
15 trator has been appointed conservator or re-
16 ceiver, any claim of such person for services
17 performed before the appointment of the con-
18 servator or the receiver shall be—

19 “(i) a claim to be paid in accordance
20 with subsections (b) and (g); and

21 “(ii) deemed to have arisen as of the
22 date the conservator or receiver was ap-
23 pointed.

24 “(B) SERVICES PERFORMED AFTER AP-
25 POINTMENT AND PRIOR TO REPUDIATION.—If,

1 in the case of any contract for services de-
2 scribed in subparagraph (A), the conservator or
3 receiver accepts performance by the other per-
4 son before the conservator or receiver makes
5 any determination to exercise the right of repu-
6 diation of such contract under this section—

7 “(i) the other party shall be paid
8 under the terms of the contract for the
9 services performed; and

10 “(ii) the amount of such payment
11 shall be treated as an administrative ex-
12 pense of the conservatorship or receiver-
13 ship.

14 “(C) ACCEPTANCE OF PERFORMANCE NO
15 BAR TO SUBSEQUENT REPUDIATION.—The ac-
16 ceptance by any conservator or receiver of serv-
17 ices referred to in subparagraph (B) in connec-
18 tion with a contract described in such subpara-
19 graph shall not affect the right of the conserva-
20 tor or receiver to repudiate such contract under
21 this section at any time after such performance.

22 “(8) CERTAIN QUALIFIED FINANCIAL CON-
23 TRACTS.—

24 “(A) RIGHTS OF PARTIES TO CON-
25 TRACTS.—Subject to paragraph (10) of this

1 subsection and notwithstanding any other provi-
2 sion of this Act (other than subsection (b)(9)
3 and section 21D(e)), any other Federal law, or
4 the law of any State, no person shall be stayed
5 or prohibited from exercising—

6 “(i) any right to cause the termi-
7 nation or liquidation of any qualified finan-
8 cial contract with an insured depository in-
9 stitution which arises upon the appoint-
10 ment of the Administrator as receiver for
11 such institution at any time after such ap-
12 pointment;

13 “(ii) any right under any security ar-
14 rangement relating to any contract or
15 agreement described in clause (i); or

16 “(iii) any right to offset or net out
17 any termination value, payment amount, or
18 other transfer obligation arising under or
19 in connection with 1 or more contracts and
20 agreements described in clause (i), includ-
21 ing any master agreement for such con-
22 tracts or agreements.

23 “(B) APPLICABILITY OF OTHER PROVI-
24 SIONS.—Subsection (b)(12) shall apply in the
25 case of any judicial action or proceeding

1 brought against any receiver referred to in sub-
2 paragraph (A), or the insured depository insti-
3 tution for which such receiver was appointed,
4 by any party to a contract or agreement de-
5 scribed in subparagraph (A)(i) with such insti-
6 tution.

7 “(C) CERTAIN TRANSFERS NOT AVOID-
8 ABLE.—

9 “(i) IN GENERAL.—Notwithstanding
10 paragraph (11), the Administrator, wheth-
11 er acting as such or as conservator or re-
12 ceiver of an insured depository institution,
13 may not avoid any transfer of money or
14 other property in connection with any
15 qualified financial contract with an insured
16 depository institution.

17 “(ii) EXCEPTION FOR CERTAIN
18 TRANSFERS.—Clause (i) shall not apply to
19 any transfer of money or other property in
20 connection with any qualified financial con-
21 tract with an insured depository institution
22 if the Administrator determines that the
23 transferee had actual intent to hinder,
24 delay, or defraud such institution, the
25 creditors of such institution, or any con-

1 servator or receiver appointed for such in-
2 stitution.

3 “(D) CERTAIN CONTRACTS AND AGREE-
4 MENTS DEFINED.—For purposes of this sub-
5 section—

6 “(i) QUALIFIED FINANCIAL CON-
7 TRACT.—The term ‘qualified financial con-
8 tract’ means any securities contract, com-
9 modity contract, forward contract, repur-
10 chase agreement, swap agreement, and any
11 similar agreement that the Administrator
12 determines by regulation to be a qualified
13 financial contract for purposes of this
14 paragraph.

15 “(ii) SECURITIES CONTRACT.—The
16 term ‘securities contract’—

17 “(I) has the meaning given to
18 such term in section 741(7) of title
19 11, United States Code, except that
20 the term ‘security’ (as used in such
21 section) shall be deemed to include
22 any mortgage loan, any mortgage-re-
23 lated security (as defined in section
24 3(a)(41) of the Securities Exchange
25 Act of 1934), and any interest in any

1 mortgage loan or mortgage-related se-
2 curity; and

3 “(II) does not include any par-
4 ticipation in a commercial mortgage
5 loan unless the Administrator deter-
6 mines by regulation, resolution, or
7 order to include any such participa-
8 tion within the meaning of such term.

9 “(iii) COMMODITY CONTRACT.—The
10 term ‘commodity contract’ has the mean-
11 ing given to such term in section 761(4) of
12 title 11, United States Code.

13 “(iv) FORWARD CONTRACT.—The
14 term ‘forward contract’ has the meaning
15 given to such term in section 101(24) of
16 title 11, United States Code.

17 “(v) REPURCHASE AGREEMENT.—The
18 term ‘repurchase agreement’—

19 “(I) has the meaning given to
20 such term in section 101(41) of title
21 11, the United States Code, except
22 that the items (as described in such
23 section) which may be subject to any
24 such agreement shall be deemed to in-
25 clude mortgage-related securities (as

1 such term is defined in section
2 3(a)(41) of the Securities Exchange
3 Act of 1934), any mortgage loan, and
4 any interest in any mortgage loan;
5 and

6 “(II) does not include any par-
7 ticipation in a commercial mortgage
8 loan unless the Administrator deter-
9 mines by regulation, resolution, or
10 order to include any such participa-
11 tion within the meaning of such term.

12 “(vi) SWAP AGREEMENT.—The term
13 ‘swap agreement’—

14 “(I) means any agreement, in-
15 cluding the terms and conditions in-
16 corporated by reference in any such
17 agreement, which is a rate swap
18 agreement, basis swap, commodity
19 swap, forward rate agreement, inter-
20 est rate future, interest rate option
21 purchased, forward foreign exchange
22 agreement, rate cap agreement, rate
23 floor agreement, rate collar agree-
24 ment, currency swap agreement,
25 cross-currency rate swap agreement,

1 currency future, or currency option
2 purchased or any other similar agree-
3 ment, and

4 “(II) includes any combination of
5 such agreements and any option to
6 enter into any such agreement.

7 “(vii) TREATMENT OF MASTER
8 AGREEMENT AS 1 SWAP AGREEMENT.—
9 Any master agreement for any agreements
10 described in clause (vi)(I) together with all
11 supplements to such master agreement
12 shall be treated as 1 swap agreement.

13 “(viii) TRANSFER.—The term ‘trans-
14 fer’ has the meaning given to such term in
15 section 101(50) of title 11, United States
16 Code.

17 “(E) CERTAIN PROTECTIONS IN EVENT OF
18 APPOINTMENT OF CONSERVATOR.—Notwith-
19 standing any other provision of this Act (other
20 than paragraph (12) of this subsection and sub-
21 section (b)(9)), any other Federal law, or the
22 law of any State, no person shall be stayed or
23 prohibited from exercising—

24 “(i) any right such person has to
25 cause the termination, liquidation, or accel-

1 eration of any qualified financial contract
2 with a depository institution in a
3 conservatorship based upon a default
4 under such financial contract which is en-
5 forceable under applicable noninsolvency
6 law;

7 “(ii) any right under any security ar-
8 rangement relating to such qualified finan-
9 cial contracts; or

10 “(iii) any right to offset or net out
11 any termination values, payment amounts,
12 or other transfer obligations arising under
13 or in connection with such qualified finan-
14 cial contracts.

15 “(9) TRANSFER OF QUALIFIED FINANCIAL CON-
16 TRACTS.—In making any transfer of assets or liabil-
17 ities of a depository institution in default which in-
18 cludes any qualified financial contract, the conserva-
19 tor or receiver for such depository institution shall
20 either—

21 “(A) transfer to 1 depository institution
22 (other than a depository institution in de-
23 fault)—

24 “(i) all qualified financial contracts
25 between—

1 “(I) any person or any affiliate of
2 such person; and

3 “(II) the depository institution in
4 default;

5 “(ii) all claims of such person or any
6 affiliate of such person against such depos-
7 itory institution under any such contract
8 (other than any claim which, under the
9 terms of any such contract, is subordinated
10 to the claims of general unsecured credi-
11 tors of such institution);

12 “(iii) all claims of such depository in-
13 stitution against such person or any affili-
14 ate of such person under any such con-
15 tract; and

16 “(iv) all property securing any claim
17 described in clause (ii) or (iii) under any
18 such contract; or

19 “(B) transfer none of the financial con-
20 tracts, claims, or property referred to in sub-
21 paragraph (A) (with respect to such person and
22 any affiliate of such person).

23 “(10) NOTIFICATION OF TRANSFER.—

24 “(A) IN GENERAL.—If—

1 “(i) the conservator or receiver for an
2 insured depository institution in default
3 makes any transfer of the assets and liabil-
4 ities of such institution; and

5 “(ii) the transfer includes any quali-
6 fied financial contract,

7 the conservator or receiver shall use such con-
8 servator’s or receiver’s best efforts to notify any
9 person who is a party to any such contract of
10 such transfer by 12:00, noon (local time) on the
11 business day following such transfer.

12 “(B) BUSINESS DAY DEFINED.—For pur-
13 poses of this paragraph, the term ‘business day’
14 means any day other than any Saturday, Sun-
15 day, or any day on which either the New York
16 Stock Exchange or the Federal Reserve Bank
17 of New York is closed.

18 “(11) CERTAIN SECURITY INTERESTS NOT
19 AVOIDABLE.—No provision of this subsection shall
20 be construed as permitting the avoidance of any le-
21 gally enforceable or perfected security interest in any
22 of the assets of any depository institution except
23 where such an interest is taken in contemplation of
24 the institution’s insolvency or with the intent to

1 hinder, delay, or defraud the institution or the credi-
2 tors of such institution.

3 “(12) AUTHORITY TO ENFORCE CONTRACTS.—

4 “(A) IN GENERAL.—The conservator or re-
5 ceiver may enforce any contract, other than a
6 director’s or officer’s liability insurance contract
7 or a depository institution bond, entered into by
8 the depository institution notwithstanding any
9 provision of the contract providing for termi-
10 nation, default, acceleration, or exercise of
11 rights upon, or solely by reason of, insolvency
12 or the appointment of a conservator or receiver.

13 “(B) CERTAIN RIGHTS NOT AFFECTED.—

14 No provision of this paragraph may be con-
15 strued as impairing or affecting any right of the
16 conservator or receiver to enforce or recover
17 under a directors or officers liability insurance
18 contract or depository institution bond under
19 other applicable law.

20 “(13) EXCEPTION FOR FEDERAL RESERVE AND
21 FEDERAL HOME LOAN BANKS.—No provision of this
22 subsection shall apply with respect to—

23 “(A) any extension of credit from any Fed-
24 eral home loan bank or Federal Reserve bank
25 to any insured depository institution; or

1 “(B) any security interest in the assets of
2 the institution securing any such extension of
3 credit.

4 “(d) PAYMENT OF INSURED DEPOSITS.—

5 “(1) IN GENERAL.—In case of the liquidation
6 of, or other closing or winding up of the affairs of,
7 any insured depository institution, payment of the
8 insured deposits in such institution shall be made by
9 the Administrator as soon as possible, subject to the
10 provisions of subsection (e), either by cash or by
11 making available to each depositor a transferred de-
12 posit in a new insured depository institution in the
13 same community or in another insured depository in-
14 stitution in an amount equal to the insured deposit
15 of such depositor.

16 “(2) REQUEST FOR FUNDS FROM FDIC.—

17 “(A) IN GENERAL.—Upon making a deter-
18 mination pursuant to paragraph (1) to pay in-
19 sured deposits at an insured depository institu-
20 tion which is a Bank Insurance Fund member
21 or a Savings Association Insurance Fund mem-
22 ber (including any institution for which the
23 Resolution Trust Corporation had been ap-
24 pointed conservator or receiver under section
25 21A, as in effect before the date of the enact-

1 ment of the Revitalization Depository Institu-
2 tion Liquidation Procedures Act of 1993), the
3 Administrator shall request the Federal Deposit
4 Insurance Corporation to transfer to the Ad-
5 ministrator the amount required for the Admin-
6 istrator to make such payments.

7 “(B) DEFINITIONS OF BIF MEMBER AND
8 SAIF MEMBER.—For purposes of subparagraph
9 (A), the terms ‘Bank Insurance Fund member’
10 and ‘Savings Association Insurance Fund mem-
11 ber’ have the meanings given to such terms in
12 paragraphs (4) and (5), respectively, of section
13 7(l) of the Federal Deposit Insurance Act.

14 “(C) AMOUNTS PAID TO NEW BANKS AND
15 BRIDGE BANKS.—A determination under—

16 “(i) paragraph (11) or (13) of sub-
17 section (h) of the amount of the insured
18 deposits, operating expenses, or losses of a
19 new bank; or

20 “(ii) subsection (i)(5)(B) to make op-
21 erating funds available to a bridge bank,
22 shall be treated as a determination pursuant to
23 paragraph (1) for purposes of this paragraph.

24 “(3) PROOF OF CLAIMS.—The Administrator,
25 in the Administrator’s discretion, may require proof

1 of claims to be filed and may approve or reject such
2 claims for insured deposits.

3 “(4) RESOLUTION OF DISPUTES.—

4 “(A) RESOLUTIONS IN ACCORDANCE TO
5 AGENCY REGULATIONS.—In the case of any dis-
6 puted claim relating to any insured deposit or
7 any determination of insurance coverage with
8 respect to any deposit, the Administrator may
9 resolve such disputed claim in accordance with
10 regulations prescribed by the Administrator es-
11 tablishing procedures for resolving such claims.

12 “(B) ADJUDICATION OF CLAIMS.—If the
13 Administrator has not prescribed regulations
14 establishing procedures for resolving disputed
15 claims, the Administrator may require the final
16 determination of a court of competent jurisdic-
17 tion before paying any such claim.

18 “(5) REVIEW OF ADMINISTRATOR’S DETER-
19 MINATION.—Final determination made by the Ad-
20 ministrator shall be reviewable in accordance with
21 chapter 7 of title 5, United States Code, by the
22 United States Court of Appeals for the District of
23 Columbia or the court of appeals for the Federal ju-
24 dicial circuit where the principal place of business of
25 the depository institution is located.

1 “(6) STATUTE OF LIMITATIONS.—Any request
2 for review of a final determination by the Adminis-
3 trator shall be filed with the appropriate United
4 States circuit court of appeals not later than 60
5 days after such determination is ordered.

6 “(e) SUBROGATION OF AGENCY.—

7 “(1) IN GENERAL.—Notwithstanding any other
8 provision of Federal law, the law of any State, or the
9 constitution of any State, the Administrator, upon
10 the payment to, or on behalf of, any depositor as
11 provided in subsection (d) in connection with any in-
12 sured depository institution or insured branch de-
13 scribed in such subsection or the assumption of any
14 deposit in such institution or branch by another in-
15 sured depository institution pursuant to this section
16 or section 13 of the Federal Deposit Insurance Act,
17 shall be subrogated to all rights of the depositor
18 against such institution or branch to the extent of
19 such payment or assumption, subject to paragraph
20 (2).

21 “(2) CLAIM OF FDIC.—Any right of the Admin-
22 istrator under subparagraph (A) with respect to any
23 payment to a depositor under subsection (d) shall be
24 subject to any claim of the Federal Deposit Insur-
25 ance Corporation under section 11(g) of the Federal

1 Deposit Insurance Act with respect to any transfer
2 of funds from the Corporation to the Administrator
3 pursuant to section 11(f) of such Act in connection
4 with such payment.

5 “(3) DIVIDENDS ON SUBROGATED AMOUNTS.—
6 The subrogation of the Administrator under para-
7 graph (1) with respect to any insured depository in-
8 stitution shall include the right on the part of the
9 Administrator to receive the same dividends from
10 the proceeds of the assets of such institution and re-
11 coveries on account of stockholders’ liability as
12 would have been payable to the depositor on a claim
13 for the insured deposit, but such depositor shall re-
14 tain such claim for any uninsured or unassumed
15 portion of the deposit.

16 “(4) WAIVER OF CERTAIN CLAIMS.—With re-
17 spect to any bank which closes after May 25, 1938,
18 the Administrator shall waive, in favor only of any
19 person against whom stockholders’ individual liabil-
20 ity may be asserted, any claim on account of such
21 liability in excess of the liability, if any, to the bank
22 or its creditors, for the amount unpaid upon such
23 stock in such bank; but any such waiver shall be ef-
24 fected in such manner and on such terms and condi-
25 tions as will not increase recoveries or dividends on

1 account of claims to which the Administrator is not
2 subrogated.

3 “(5) APPLICABILITY OF STATE LAW.—If the
4 Administrator is appointed pursuant to subsection
5 (a)(3), or determines not to invoke the authority
6 conferred in subsection (a)(4), the rights of deposi-
7 tors and other creditors of any State depository in-
8 stitution shall be determined in accordance with the
9 applicable provisions of State law.

10 “(f) SUPERVISORY RECORDS.—In addition to the re-
11 quirements of section 7(a)(2) of the Federal Deposit In-
12 surance Act to provide to the Administrator copies of re-
13 ports of examination and reports of condition, whenever
14 the Administrator has been appointed as receiver for an
15 insured depository institution, the appropriate Federal
16 banking agency shall make available all supervisory
17 records to the receiver which may be used by the receiver
18 in any manner the receiver determines to be appropriate.

19 “(g) VALUATION OF CLAIMS IN DEFAULT.—

20 “(1) IN GENERAL.—Notwithstanding any other
21 provision of Federal law or the law of any State and
22 regardless of the method which the Administrator
23 determines to utilize with respect to an insured de-
24 pository institution in default or in danger of de-
25 fault, including transactions authorized under sub-

1 section (i) of this section and section 13(c) of the
2 Federal Deposit Insurance Act, this subsection shall
3 govern the rights of the creditors (other than in-
4 sured depositors) of such institution.

5 “(2) MAXIMUM LIABILITY.—The maximum li-
6 ability of the Administrator, acting as receiver or in
7 any other capacity, to any person having a claim
8 against the receiver or the insured depository insti-
9 tution for which such receiver is appointed shall
10 equal the amount such claimant would have received
11 if the Administrator had liquidated the assets and li-
12 abilities of such institution without exercising the
13 Administrator’s authority under subsection (i) of
14 this section or section 13 of the Federal Deposit In-
15 surance Act.

16 “(3) ADDITIONAL PAYMENTS AUTHORIZED.—

17 “(A) IN GENERAL.—The Administrator
18 may, in the Administrator’s discretion and in
19 the interests of minimizing the losses of the
20 Federal Deposit Insurance Corporation, use the
21 Agency’s own resources, or request resources
22 from the Federal Deposit Insurance Corpora-
23 tion, to make additional payments or credit ad-
24 ditional amounts to or with respect to or for the

1 account of any claimant or category of claim-
2 ants.

3 “(B) SOURCE OF FUNDS.—

4 “(i) BANK INSURANCE FUND.—If the
5 depository institution in default is a Bank
6 Insurance Fund member, the Federal De-
7 posit Insurance Corporation may only
8 make funds available to the Administrator
9 for payments under subparagraph (A) out
10 of funds held in the Bank Insurance Fund.

11 “(ii) SAVINGS ASSOCIATION INSUR-
12 ANCE FUND.—If the depository institution
13 in default is a Savings Association Insur-
14 ance Fund member (including institutions
15 for which the Resolution Trust Corporation
16 was appointed as a conservator or receiver
17 before such corporation was abolished), the
18 Federal Deposit Insurance Corporation
19 may only make funds available to the Ad-
20 ministrator for payments under subpara-
21 graph (A) out of funds held in the Savings
22 Association Insurance Fund.

23 “(iii) ASSOCIATIONS SUBJECT TO
24 FSLIC RESOLUTION FUND.—If the deposi-
25 tory institution in default is an institution

1 for which the Administrator has been ap-
2 pointed conservator or receiver under sec-
3 tion 11A(a)(5) of the Federal Deposit In-
4 surance Act, funds for the institution shall
5 be obtained by the Administrator from—

6 “(I) the Administrator’s own re-
7 sources under subsections (b) and (c)
8 of section 11A of the Federal Deposit
9 Insurance Act; and

10 “(II) the Federal Deposit Insur-
11 ance Corporation out of funds held in
12 the Savings Association Insurance
13 Fund.

14 “(C) MANNER OF PAYMENT.—The Admin-
15 istrator may make the payments or credit the
16 amounts specified in subparagraph (A) directly
17 to the claimants or may make such payments or
18 credit such amounts to an open insured deposi-
19 tory institution to induce such institution to ac-
20 cept liability for such claims.

21 “(D) LIMIT ON ADDITIONAL LIABILITY.—
22 Notwithstanding any other provision of Federal
23 or State law, or the constitution of any State,
24 the Administrator shall not be obligated, as a
25 result of having made any such payment or

1 credited any amount under subparagraph (A) to
2 or with respect to or for the account of any
3 claimant or category of claimants, to make pay-
4 ments to any other claimant or category of
5 claimants.

6 “(h) NEW BANKS.—

7 “(1) ORGANIZATION AUTHORIZED.—As soon as
8 possible after the default of an insured bank, the
9 Administrator, if it finds that it is advisable and in
10 the interest of the depositors of the insured bank in
11 default or the public shall organize a new national
12 bank in the same community as the bank in default
13 to assume the insured deposits of such bank in de-
14 fault and otherwise to perform temporarily the func-
15 tions hereinafter provided for.

16 “(2) ARTICLES OF ASSOCIATION.—The articles
17 of association and the organization certificate of the
18 new bank shall be executed by representatives des-
19 ignated by the Administrator.

20 “(3) CAPITAL STOCK.—No capital stock need
21 be paid in by the Administrator.

22 “(4) EXECUTIVE OFFICER.—The new bank
23 shall not have a board of directors, but shall be
24 managed by an executive officer appointed by the

1 Administrator who shall be subject to the Adminis-
2 trator's direction.

3 “(5) SUBJECT TO LAWS RELATING TO NA-
4 TIONAL BANKS.—In all other respects, the new bank
5 shall be organized in accordance with the provisions
6 of law relating to the organization of national banks,
7 as in effect on the date of organization.

8 “(6) NEW DEPOSITS.—The new bank may, with
9 the approval of the Administrator, accept new depos-
10 its which shall be subject to withdrawal on demand
11 and which, except where the new bank is the only
12 bank in the community, shall not exceed \$100,000
13 from any depositor.

14 “(7) INSURED STATUS.—The new bank, with-
15 out application to or approval by the Federal De-
16 posit Insurance Corporation, shall be an insured de-
17 pository institution and shall maintain on deposit
18 with the Federal Reserve bank of the new bank's
19 district reserves in the amount required by law for
20 member banks, but the new bank shall not be re-
21 quired to subscribe for stock of the Federal Reserve
22 bank.

23 “(8) INVESTMENTS.—Funds of the new bank
24 shall be kept on hand in cash, invested in obligations
25 of the United States or obligations guaranteed as to

1 principal and interest by the United States, or de-
2 posited with the Administrator, any Federal Reserve
3 bank, or, to the extent of the insurance coverage on
4 any such deposit, an insured depository institution.

5 “(9) CONDUCT OF BUSINESS.—The new bank,
6 unless otherwise authorized by the Comptroller of
7 the Currency, shall transact business only as author-
8 ized by this Act and as may be incidental to the new
9 bank’s organization.

10 “(10) EXEMPT STATUS.—Notwithstanding any
11 other provision of Federal or State law, the new
12 bank and the bank’s franchise, property, and income
13 shall be exempt from all taxation now or hereafter
14 imposed by the United States, by any territory, de-
15 pendency, or possession of the United States, or by
16 any State, county, municipality, or local taxing au-
17 thority.

18 “(11) TRANSFER OF DEPOSITS.—

19 “(A) IN GENERAL.—Upon the organization
20 of a new bank, the Administrator shall—

21 “(i) promptly make available to the
22 new bank an amount equal to the esti-
23 mated insured deposits of the bank in de-
24 fault plus the estimated amount of the ex-
25 penses of operating the bank; and

1 “(ii) determine as soon as possible the
2 amount due each depositor for the deposi-
3 tor’s insured deposit in the bank in de-
4 fault, and the total expenses of operation
5 of the new bank.

6 “(B) ADJUSTMENTS.—Upon making any
7 determination under subparagraph (A)(ii), the
8 Administrator shall adjust the amounts which
9 were estimated and made available pursuant to
10 subparagraph (A)(i) so as to conform to the
11 amounts so determined.

12 “(12) EARNINGS.—Earnings of the new bank
13 shall be paid over or credited to the Administrator
14 and treated as amounts received from a liquidation
15 for purposes of subsection (b)(11)(A).

16 “(13) LOSSES.—If any new bank, during the
17 period the bank remains a new bank under this sub-
18 section, sustains any losses with respect to which the
19 bank is not effectively protected from loss (other
20 than by reason of being an insured bank), the Ad-
21 ministrator shall furnish to the bank additional
22 funds in the amount of such losses.

23 “(14) PAYMENT OF INSURED DEPOSITS.—

24 “(A) ASSUMPTION OF TRANSFERRED DE-
25 POSITS.—A new bank shall assume, as trans-

1 ferred deposits, the payment of the insured de-
2 posits of the depositors of the bank in default
3 to each of the depositors of the bank in default.

4 “(B) TRANSFERS FOR OPERATIONAL EX-
5 PENSES AND LIQUIDITY PURPOSES.—Of the
6 amounts so made available, the Administrator
7 shall transfer to the new bank, in cash, such
8 sums as may be necessary to enable the bank
9 to meet the bank’s expenses of operation and
10 immediate cash demands on such transferred
11 deposits, and the remainder of such amounts
12 shall be subject to withdrawal by the new bank
13 on demand.

14 “(15) ISSUANCE OF STOCK.—

15 “(A) IN GENERAL.—The Administrator
16 may provide for capital stock of the new bank
17 to be offered for sale on such terms and condi-
18 tions as the Administrator determines to be ad-
19 visable and in an amount sufficient, in the opin-
20 ion of the Administrator, to allow the business
21 of the new bank to be conducted on a sound
22 basis, but in no event less than that required by
23 section 5138 of the Revised Statutes for the or-
24 ganization of a national bank in the place where
25 such new bank is located.

1 “(B) FIRST RIGHT OF PURCHASE.—The
2 stockholders of the insured bank in default shall
3 be given the first opportunity to purchase, in an
4 offering under subparagraph (A), any shares of
5 common stock of the new bank.

6 “(16) ISSUANCE OF CERTIFICATE.—

7 “(A) ORGANIZATION OF SUCCESSOR NA-
8 TIONAL BANK.—Upon proof that an adequate
9 amount of capital stock in the new bank has
10 been subscribed and paid for in cash, the
11 Comptroller of the Currency shall require the
12 articles of association and the organization cer-
13 tificate of the new bank to be amended to con-
14 form to the requirements for the organization
15 of a national bank.

16 “(B) AUTHORITY OF SUCCESSOR BANK TO
17 COMMENCE BUSINESS.—When the amendments
18 required to be made by a new bank under sub-
19 paragraph (A) have been made and the require-
20 ments of law with respect to the organization of
21 a national bank have been complied with by
22 such bank, the Comptroller of the Currency
23 shall issue to the bank a certificate of authority
24 to commence business.

1 “(C) CHANGE OF STATUS.—Upon the issu-
2 ance of a certificate of authority to commence
3 business to a new bank under subparagraph
4 (B), the bank—

5 “(i) shall cease to have the status of
6 a new bank;

7 “(ii) shall be managed by directors
8 elected by the bank’s own shareholders;

9 “(iii) may exercise all the powers
10 granted by law to a national bank;

11 “(iv) shall be subject to all provisions
12 of law relating to national banks; and

13 “(v) shall continue to be an insured
14 bank without application to or approval by
15 the Federal Deposit Insurance Corpora-
16 tion.

17 “(17) TRANSFER TO OTHER INSTITUTION.—If
18 the capital stock of the new bank is not offered for
19 sale, or if an adequate amount of capital for such
20 new bank is not subscribed and paid for, the Admin-
21 istrator—

22 “(A) may offer to transfer the new bank’s
23 business to any insured depository institution in
24 the same community which will—

25 “(i) take over the bank’s assets;

1 “(ii) assume the new bank’s liabilities;
2 and

3 “(iii) pay to the Administrator for
4 such business such amount as the Admin-
5 istrator may deem adequate; or

6 “(B) in the Administrator’s discretion,
7 may—

8 “(i) change the location of the new
9 bank to—

10 “(I) an office of the Agency; or

11 “(II) to some other place; or

12 “(ii) at any time, wind up the bank’s
13 affairs as provided in this section.

14 “(18) WINDING UP.—

15 “(A) IN GENERAL.—If the capital stock of
16 the new bank is not sold or the bank is not ac-
17 quired (as defined in section 13(f)(8)(B) of the
18 Federal Deposit Insurance Act) before the end
19 of the 2-year period beginning on the date of
20 the organization of the new bank, the Adminis-
21 trator shall—

22 “(i) wind up the affairs of such bank,
23 after giving such notice as the Comptroller
24 of the Currency may require;

25 “(ii) terminate the bank;

1 “(iii) certify to the Comptroller of the
2 Currency the termination of the new bank.

3 “(B) AGENCY AS SUCCESSOR TO TERMI-
4 NATED BANK.—After the termination of a new
5 bank under subparagraph (A), the Adminis-
6 trator shall be liable for the obligations of such
7 bank and shall be the owner of the banks as-
8 sets.

9 “(19) APPLICABILITY OF CERTAIN LAWS.—The
10 provisions of sections 5220 and 5221 of the Revised
11 Statutes shall not apply to a new bank under this
12 subsection.

13 “(i) BRIDGE BANKS.—

14 “(1) ORGANIZATION.—

15 “(A) PURPOSE.—Subject to any other re-
16 quirement of this subsection, if 1 or more in-
17 sured banks are in default, or if the Federal
18 Deposit Insurance Corporation determines that
19 1 or more insured banks are in danger of de-
20 fault (as defined in section 3 of the Federal De-
21 posit Insurance Act), the Administrator may, in
22 the Administrator’s discretion (and after notice
23 from the Administrator of any such determina-
24 tion) organize, and the Office of the Comptrol-
25 ler of the Currency shall charter, 1 or more na-

1 tional banks which shall be known as bridge
2 banks and shall have the powers and attributes
3 of national banks.

4 “(B) AUTHORITIES.—Upon the granting
5 of a charter to a bridge bank, the bridge bank
6 may—

7 “(i) assume such deposits of any in-
8 sured bank that is in default or in danger
9 of default as the Administrator may, in the
10 Administrator’s discretion, determine to be
11 appropriate, except that if any insured de-
12 posits of a bank are assumed, all insured
13 deposits of that bank shall be assumed by
14 the bridge bank or another insured deposi-
15 tory institution;

16 “(ii) assume such other liabilities (in-
17 cluding liabilities associated with any trust
18 business) of any insured bank that is in
19 default or in danger of default as the Ad-
20 ministrator may, in the Administrator’s
21 discretion, determine to be appropriate;

22 “(iii) purchase such assets (including
23 assets associated with any trust business)
24 of any insured bank that is in default or
25 in danger of default as the Administrator

1 may, in the Administrator's discretion, de-
2 termine to be appropriate; and

3 “(iv) perform any other temporary
4 function which the Administrator may, in
5 the Administrator's discretion, prescribe in
6 accordance with this Act.

7 “(C) ARTICLES OF ASSOCIATION.—The ar-
8 ticles of association and organization certificate
9 of a bridge bank as approved by the Adminis-
10 trator shall be executed by 3 representatives
11 designated by the Administrator.

12 “(D) INTERIM DIRECTORS.—A bridge bank
13 shall have an interim board of directors consist-
14 ing of not fewer than 5 nor more than 10 mem-
15 bers appointed by the Administrator.

16 “(E) NATIONAL BANK.—A bridge bank
17 shall be organized as a national bank.

18 “(F) DETERMINATION OF A BANK IN DAN-
19 GER OF DEFAULT.—For purposes of this sub-
20 section, the determination that a bank is in
21 danger of default shall be made by the Federal
22 Deposit Insurance Corporation.

23 “(2) CHARTERING.—

24 “(A) CONDITIONS.—A national bank may
25 be chartered by the Comptroller of the Cur-

1 rency as a bridge bank only if the Adminis-
2 trator determines that—

3 “(i) the amount which is reasonably
4 necessary to operate such bridge bank will
5 not exceed the amount which is reasonably
6 necessary to save the cost of liquidating,
7 including paying the insured accounts of, 1
8 or more insured banks in default or in
9 danger of default with respect to which the
10 bridge bank is chartered;

11 “(ii) the continued operation of any
12 insured bank in default or in danger of de-
13 fault with respect to which the bridge bank
14 is chartered is essential to provide ade-
15 quate banking services in the community
16 where each such bank in default or in dan-
17 ger of default is located; or

18 “(iii) the continued operation of any
19 such insured bank in default or in danger
20 of default with respect to which the bridge
21 bank is chartered is in the best interest
22 of—

23 “(I) the depositors of any such
24 bank in default or in danger of de-
25 fault; or

1 “(II) the public.

2 “(B) INSURED NATIONAL BANK.—A bridge
3 bank shall be an insured bank from the time
4 the bank is chartered as a national bank.

5 “(C) BRIDGE BANK TREATED AS BEING IN
6 DEFAULT FOR CERTAIN PURPOSES.—A bridge
7 bank shall be treated as an insured bank in de-
8 fault at such times and for such purposes as
9 the Administrator may, in the Administrator’s
10 discretion, determine to be appropriate.

11 “(D) MANAGEMENT.—Upon the granting
12 of a charter to a bridge bank, the bridge bank
13 shall be under the management of a board of
14 directors consisting of not fewer than 5 nor
15 more than 10 members appointed by the Ad-
16 ministrator.

17 “(E) BYLAWS.—The board of directors of
18 a bridge bank shall adopt such bylaws as may
19 be approved by the Administrator.

20 “(3) TRANSFER OF ASSETS AND LIABILITIES.—

21 “(A) IN GENERAL.—

22 “(i) TRANSFER UPON GRANT OF
23 CHARTER.—If a bridge bank is chartered
24 under this subsection with respect to an in-
25 sured bank in default, the Administrator,

1 as receiver, and any other receiver ap-
2 pointed with respect to the bank in default,
3 may transfer any assets and liabilities of
4 the bank in default to the bridge bank in
5 accordance with paragraph (1).

6 “(ii) SUBSEQUENT TRANSFERS.—At
7 any time after a charter is granted to a
8 bridge bank, the Administrator, as re-
9 ceiver, or any other receiver appointed with
10 respect to an insured bank in default, may
11 transfer to the bridge bank any assets and
12 liabilities of the bank in default as the Ad-
13 ministrator may, in the Administrator’s
14 discretion, determine to be appropriate in
15 accordance with paragraph (1).

16 “(iii) TREATMENT OF TRUST BUSI-
17 NESS.—For purposes of this paragraph,
18 the trust business of any insured bank in
19 default, including any fiduciary appoint-
20 ment of such bank, shall be included
21 among and treated as the bank’s assets
22 and liabilities.

23 “(iv) EFFECTIVE WITHOUT AP-
24 PROVAL.—The transfer of any asset or li-
25 ability of an insured bank in default, in-

1 cluding any asset or liability associated
2 with the trust business of the bank, to a
3 bridge bank shall be effective without any
4 further approval under Federal or State
5 law, assignment, or consent with respect to
6 the transferral.

7 “(B) INTENT OF CONGRESS REGARDING
8 CONTINUING OPERATIONS.—It is the intent of
9 the Congress that, in order to prevent unneces-
10 sary hardship or losses to the customers of any
11 insured bank in default with respect to which a
12 bridge bank is chartered, especially credit-
13 worthy farmers, small businesses, and house-
14 holds, the Administrator should—

15 “(i) continue to honor commitments
16 made by the bank in default to credit-
17 worthy customers, and

18 “(ii) not interrupt or terminate ade-
19 quately secured loans which are trans-
20 ferred under subparagraph (A) and are
21 being repaid by the debtor in accordance
22 with the terms of the loan instrument.

23 “(4) POWERS OF BRIDGE BANKS.—Each bridge
24 bank chartered under this subsection shall have all

1 corporate powers of, and be subject to the same pro-
2 visions of law as, a national bank, except that—

3 “(A) the Administrator may—

4 “(i) remove the interim directors and
5 directors of a bridge bank;

6 “(ii) fix the compensation of members
7 of the interim board of directors and the
8 board of directors and senior management,
9 as determined by the Administrator in the
10 Administrator’s discretion, of a bridge
11 bank; and

12 “(iii) waive any requirement estab-
13 lished under section 5145, 5146, 5147,
14 5148, or 5149 of the Revised Statutes (re-
15 lating to directors of national banks) or
16 section 31 of the Banking Act of 1933
17 which would otherwise be applicable with
18 respect to directors of a bridge bank by op-
19 eration of paragraph (2)(B);

20 “(B) the Administrator may indemnify the
21 representatives for purposes of paragraph
22 (1)(B) and the interim directors, officers, em-
23 ployees, and agents of a bridge bank on such
24 terms as the Administrator determines to be
25 appropriate;

1 “(C) no requirement under section 5138 of
2 the Revised Statutes or any other provision of
3 law relating to the capital of a national bank
4 shall apply with respect to a bridge bank;

5 “(D) the Comptroller of the Currency may
6 establish a limitation on the extent to which
7 any person may become indebted to a bridge
8 bank without regard to the amount of the
9 bridge bank’s capital or surplus;

10 “(E) the board of directors of a bridge
11 bank—

12 “(i) shall elect a chairperson who may
13 also serve in the position of chief executive
14 officer, except that such person shall not
15 serve either as chairperson or as chief ex-
16 ecutive officer without the prior approval
17 of the Administrator; and

18 “(ii) may appoint a chief executive of-
19 ficer who is not also the chairperson, ex-
20 cept that such person shall not serve as
21 chief executive officer without the prior ap-
22 proval of the Administrator;

23 “(F) a bridge bank shall not be required to
24 purchase stock of any Federal Reserve bank;

1 “(G) the Comptroller of the Currency shall
2 waive any requirement for a fidelity bond with
3 respect to a bridge bank at the request of the
4 Administrator;

5 “(H) any judicial action to which a bridge
6 bank becomes a party by virtue of the bridge
7 bank’s acquisition of any assets or assumption
8 of any liabilities of a bank in default shall be
9 stayed from further proceedings for a period of
10 up to 45 days at the request of the bridge bank;

11 “(I) no agreement which tends to diminish
12 or defeat the right, title or interest of a bridge
13 bank in any asset of an insured bank in default
14 acquired by it shall be valid against the bridge
15 bank unless such agreement meets the require-
16 ments of subsection (b)(9)(A);

17 “(J) notwithstanding subsection (b)(9)(A),
18 any agreement relating to an extension of credit
19 between a Federal home loan bank or Federal
20 Reserve bank and any insured depository insti-
21 tution which was executed before the extension
22 of credit by such bank to such depository insti-
23 tution shall be treated as having been executed
24 contemporaneously with such extension of credit
25 for purposes of subparagraph (I); and

1 “(K) a bridge bank may not, in any trans-
2 action or series of transactions, issue capital
3 stock or be a party to any merger, consolida-
4 tion, disposition of assets or liabilities, sale or
5 exchange of capital stock, or similar trans-
6 action, or change the bank’s charter without the
7 prior approval of the Administrator.

8 “(5) CAPITAL.—

9 “(A) NO CAPITAL REQUIRED.—The Ad-
10 ministrator shall not be required to—

11 “(i) issue any capital stock on behalf
12 of a bridge bank chartered under this sub-
13 section; or

14 “(ii) purchase any capital stock of a
15 bridge bank, except that notwithstanding
16 any other provision of Federal or State
17 law, the Administrator may purchase and
18 retain capital stock of a bridge bank in
19 such amounts and on such terms as the
20 Administrator, in the Administrator’s dis-
21 cretion, determines to be appropriate.

22 “(B) OPERATING FUNDS IN LIEU OF CAP-
23 ITAL.—Upon the organization of a bridge bank,
24 and thereafter, as the Administrator may, in
25 the Administrator’s discretion, determine to be

1 necessary or advisable, the Administrator may
2 make available to the bridge bank, upon such
3 terms and conditions and in such form and
4 amounts as the Administrator may determine
5 (in the Administrator's discretion), funds for
6 the operation of the bridge bank in lieu of cap-
7 ital.

8 “(C) AUTHORITY TO ISSUE CAPITAL
9 STOCK.—The Administrator shall cause capital
10 stock of a bridge bank to be issued and offered
11 for sale in such amounts and on such terms and
12 conditions as the Administrator may, in the Ad-
13 ministrator's discretion, determine after making
14 a determination that such an offering is appro-
15 priate.

16 “(6) NO FEDERAL STATUS.—

17 “(A) AGENCY STATUS.—A bridge bank
18 shall not be treated as an agency, establish-
19 ment, or instrumentality of the United States.

20 “(B) EMPLOYEE STATUS.—

21 “(i) NO FEDERAL EMPLOYEE STA-
22 TUS.—A person who serves at the request
23 of the Administrator as a representative
24 for purposes of paragraph (1)(B) or who is
25 an interim director, director, officer, em-

1 ployee, or agent of a bridge bank shall not
2 be considered to be an officer or employee
3 of the United States, or of any agency or
4 instrumentality of the United States, solely
5 by virtue of service in any such capacity.

6 “(ii) STATUS OF FEDERAL EMPLOYEE
7 ON DETAIL.—Any employee of the Admin-
8 istrator or of any Federal instrumentality
9 who serves at the request of the Adminis-
10 trator as a representative for purposes of
11 paragraph (1)(B), or is an interim direc-
12 tor, director, officer, employee, or agent of
13 a bridge bank shall not—

14 “(I) solely by virtue of service in
15 any such capacity lose any existing
16 status as an officer or employee of the
17 United States for purposes of title 5,
18 United States Code, or any other pro-
19 vision of law; or

20 “(II) receive any salary or bene-
21 fits for service in any such capacity
22 with respect to a bridge bank in addi-
23 tion to such salary or benefits as are
24 obtained through employment with

1 the Administrator or such Federal in-
2 strumentality.

3 “(7) ASSISTANCE AUTHORIZED.—The Adminis-
4 trator may, in the Administrator’s discretion, pro-
5 vide assistance under section 13(c) of the Federal
6 Deposit Insurance Act—

7 “(A) to facilitate any transaction described
8 in clause (i), (ii), or (iii) of paragraph (10)(A)
9 with respect to any bridge bank in the same
10 manner and to the same extent as such assist-
11 ance may be provided under such section with
12 respect to an insured bank in default; or

13 “(B) to facilitate a bridge bank’s acquisi-
14 tion of any assets or the assumption of any li-
15 abilities of an insured bank in default.

16 “(8) ACQUISITION.—

17 “(A) IN GENERAL.—The responsible agen-
18 cy shall notify the Attorney General of any
19 transaction involving the merger or sale of a
20 bridge bank requiring approval under section
21 18(c) of the Federal Deposit Insurance Act
22 and, if a report on competitive factors is re-
23 quested within 10 days, such transaction may
24 not be consummated before the 5th calendar
25 day after the date of approval by the respon-

1 sible agency (as defined in section 18(c)(2) of
2 the Federal Deposit Insurance Act) with re-
3 spect to the transaction.

4 “(B) EXCEPTION.—If the responsible
5 agency (as so defined) finds that the agency
6 must act immediately to prevent the probable
7 failure of 1 of the banks involved, subparagraph
8 (A) shall not apply and the transaction may be
9 consummated immediately upon approval by the
10 agency.

11 “(C) RULE APPLICABLE TO OUT-OF-STATE
12 HOLDING COMPANIES.—

13 “(i) IN GENERAL.—Any depository in-
14 stitution, including an out-of-State deposi-
15 tory institution, or any out-of-State deposi-
16 tory institution holding company may ac-
17 quire and retain the capital stock or assets
18 of, or otherwise acquire and retain a bridge
19 bank if the bridge bank at any time had
20 assets aggregating \$500,000,000 or more,
21 as determined by the Administrator on the
22 basis of the bridge bank’s reports of condi-
23 tion or on the basis of the last available re-
24 ports of condition of any insured bank in
25 default which has been acquired, or whose

1 assets have been acquired, by the bridge
2 bank.

3 “(ii) FORM OF ACQUISITION.—The ac-
4 quiring entity may acquire the bridge bank
5 only in the same manner and to the same
6 extent as such entity may acquire an in-
7 sured bank in default under section
8 13(f)(2) of the Federal Deposit Insurance
9 Act.

10 “(9) DURATION OF BRIDGE BANK.—

11 “(A) IN GENERAL.—Subject to subpara-
12 graph (B) and paragraphs (11) and (12), the
13 status of a bridge bank as such shall terminate
14 at the end of the 2-year period following the
15 date it was granted a charter.

16 “(B) EXTENSION OF PERIOD.—The Ad-
17 ministrator may, in the Administrator’s discre-
18 tion, extend the status of the bridge bank as
19 such for 3 additional 1-year periods.

20 “(10) TERMINATION OF BRIDGE BANK STA-
21 TUS.—The status of any bridge bank, as such, shall
22 terminate upon the earliest of—

23 “(A) the merger or consolidation of the
24 bridge bank with a depository institution that is
25 not a bridge bank;

1 “(B) at the election of the Administrator,
2 the sale of a majority of the capital stock of the
3 bridge bank to an entity other than the Admin-
4 istrator and other than another bridge bank;

5 “(C) the sale of 80 percent or more of the
6 capital stock of the bridge bank to an entity
7 other than the Administrator or another bridge
8 bank;

9 “(D) at the election of the Adminis-
10 trator—

11 “(i) the assumption of all or substan-
12 tially all of the deposits and other liabil-
13 ities of the bridge bank by a depository in-
14 stitution holding company or a depository
15 institution that is not a bridge bank; or

16 “(ii) the acquisition of all or substan-
17 tially all of the assets of the bridge bank
18 by a depository institution holding com-
19 pany, a depository institution that is not a
20 bridge bank, or other entity as permitted
21 under applicable law; and

22 “(E) the expiration of the period applicable
23 under paragraph (9), or the earlier dissolution
24 of the bridge bank as provided in paragraph
25 (12).

1 “(11) EFFECT OF TERMINATION EVENTS.—

2 “(A) MERGER OR CONSOLIDATION.—A
3 bridge bank that participates in a merger or
4 consolidation as provided in paragraph (10)(A)
5 shall be considered for all purposes to be a na-
6 tional bank with all the rights, powers, and
7 privileges of a national bank, and such merger
8 or consolidation shall be conducted in accord-
9 ance with, and shall have the effect provided in,
10 the provisions of applicable law.

11 “(B) CHARTER CONVERSION.—Following
12 the sale of a majority of the capital stock of the
13 bridge bank as provided in paragraph (10)(B),
14 the Administrator may amend the charter of
15 the bridge bank to reflect the termination of the
16 status of the bridge bank as such, whereupon
17 the bank shall remain a national bank, with all
18 of the rights, powers, and privileges of a na-
19 tional bank, and shall be subject to all laws and
20 regulations applicable to national banks.

21 “(C) SALE OF STOCK.—Following the sale
22 of 80 percent or more of the capital stock of a
23 bridge bank as provided in paragraph (10)(C),
24 the bank shall remain a national bank, with all
25 of the rights, powers, and privileges of a na-

1 tional bank, and shall be subject to all laws and
2 regulations applicable to national banks.

3 “(D) ASSUMPTION OF LIABILITIES AND
4 SALE OF ASSETS.—Following the assumption of
5 all or substantially all of the liabilities of the
6 bridge bank, or the sale of all or substantially
7 all of the assets of the bridge bank in accord-
8 ance with paragraph (10)(D), the bridge bank
9 may retain, at the election of the Administrator,
10 the bank’s status as a bridge bank for the pe-
11 riod provided in paragraph (9).

12 “(E) EFFECT ON HOLDING COMPANIES.—
13 A depository institution holding company ac-
14 quiring a bridge bank under section 13(f) of the
15 Federal Deposit Insurance Act or paragraph
16 (8)(C) of this subsection (or any predecessor
17 provision) shall—

18 “(i) not be impaired or adversely af-
19 fected by the termination of the status of
20 a bridge bank under subparagraph (A),
21 (B), (C), or (D) of paragraph (10); and

22 “(ii) be entitled to the rights and
23 privileges provided in section 13(f) of such
24 Act.

1 “(F) AMENDMENTS TO CHARTER.—Fol-
2 lowing the consummation of a transaction de-
3 scribed in subparagraph (A), (B), (C), or (D)
4 of paragraph (10), the charter of the resulting
5 institution shall be amended to reflect the ter-
6 mination of bridge bank status, if appropriate.

7 “(12) DISSOLUTION OF BRIDGE BANK.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of State or Federal law, if the
10 bridge bank’s status as such has not previously
11 been terminated by the occurrence of an event
12 specified in subparagraph (A), (B), (C), or (D)
13 of paragraph (10)—

14 “(i) the Administrator may, in the
15 Administrator’s discretion, dissolve a
16 bridge bank in accordance with this para-
17 graph at any time; and

18 “(ii) the Administrator shall promptly
19 commence dissolution proceedings in ac-
20 cordance with this paragraph upon the ex-
21 piration of the 2-year period following the
22 date the bridge bank was chartered, or any
23 extension of such period under paragraph
24 (9).

25 “(B) PROCEDURES.—

1 “(i) APPOINTMENT OF RECEIVER.—

2 The Comptroller of the Currency shall ap-
3 point the Administrator receiver for a
4 bridge bank upon certification by the Ad-
5 ministrator to the Comptroller of the Cur-
6 rency of the Administrator’s determination
7 to dissolve the bridge bank.

8 “(ii) DUTY OF RECEIVER.—The Ad-
9 ministrator, as receiver, shall wind up the
10 affairs of the bridge bank in conformity
11 with the provisions of law relating to the
12 liquidation of closed national banks.

13 “(iii) RIGHTS AND POWERS OF RE-
14 CEIVER.—With respect to any such bridge
15 bank, the Administrator, as receiver, shall
16 have all the rights, powers, and privileges
17 and shall perform the duties related to the
18 exercise of such rights, powers, or privi-
19 leges granted by law to a receiver of any
20 insured depository institution.

21 “(iv) INDEPENDENCE OF RE-
22 CEIVER.—Notwithstanding any other pro-
23 vision of law, the Administrator shall not
24 be subject to the direction or supervision of
25 any State agency or other Federal agency

1 in the exercise of the Administrator's
2 rights, powers, and privileges under this
3 subparagraph.

4 “(13) MULTIPLE BRIDGE BANKS.—Subject to
5 paragraph (1)(B)(i), the Administrator may, in the
6 Administrator's discretion, organize 2 or more
7 bridge banks under this subsection to assume any
8 deposits of, assume any other liabilities of, and pur-
9 chase any assets of a single bank in default.

10 **“SEC. 21D. PROVISIONS APPLICABLE TO AGENCY AS CON-**
11 **SERVATOR OR RECEIVER.**

12 “(a) OTHER EXEMPTIONS.—

13 “(1) IN GENERAL.—The following provisions
14 shall apply with respect to the Agency when the
15 Agency is acting as a receiver:

16 “(A) TAX EXEMPTION.—Subject to para-
17 graph (3), the Agency, including the franchise,
18 capital, reserves, surplus, and income of the
19 Agency, shall be exempt from all taxation im-
20 posed by any State, county, municipality, or
21 local taxing authority.

22 “(B) EXEMPTION FROM ATTACHMENT,
23 FORECLOSURE, AND SALE.—No property of the
24 Agency shall be subject to levy, attachment (in-
25 cluding the attachment of any involuntary lien),

1 garnishment, foreclosure, or sale without the
2 consent of the Administrator.

3 “(C) EXEMPTION FROM PENALTIES.—The
4 Agency shall not be liable for any amounts in
5 the nature of penalties or fines, including those
6 arising from the failure of any person to pay
7 any real property, personal property, probate,
8 or recording tax or any recording or filing fees
9 when due.

10 “(2) EXCEPTION FOR FEDERAL TAX.—This
11 subsection shall not apply with respect to any tax
12 imposed (or other amount arising) under the Inter-
13 nal Revenue Code of 1986.

14 “(3) EXCEPTION FOR REAL PROPERTY TAX.—
15 Notwithstanding paragraph (1)(A), any real prop-
16 erty of the Administrator shall be subject to State,
17 territorial, county, municipal, or local taxation to the
18 same extent according to the property’s value as
19 other real property is taxed, except that, notwith-
20 standing the failure of any person to challenge an
21 assessment under State law of such property’s value,
22 such value, and the tax on with respect to such
23 value, shall be determined as of the period for which
24 such tax is imposed.

1 “(b) CERTAIN CONVICTED DEBTORS PROHIBITED
2 FROM PURCHASING ASSETS.—

3 “(1) CONVICTED DEBTORS.—Except as pro-
4 vided in paragraph (2), any individual who—

5 “(A) has been convicted of an offense
6 under section 215, 656, 657, 1005, 1006, 1007,
7 1008, 1014, 1032, 1341, 1343, or 1344 of title
8 18, United States Code, or of conspiring to
9 commit such an offense, affecting any insured
10 depository institution for which any conservator
11 or receiver has been appointed; and

12 “(B) is in default on any loan or other ex-
13 tension of credit from such insured depository
14 institution which, if not paid, will cause sub-
15 stantial loss to the institution, any deposit in-
16 surance fund, the Administrator, or the FSLIC
17 Resolution Fund,

18 may not purchase any asset of such institution from
19 the conservator or receiver.

20 “(2) SETTLEMENT OF CLAIMS.—Paragraph (1)
21 shall not apply to the sale or transfer by the Admin-
22 istrator of any asset of any insured depository insti-
23 tution to any individual if the sale or transfer of the
24 asset resolves or settles, or is part of the resolution
25 or settlement, of—

1 “(A) 1 or more claims that have been, or
2 could have been, asserted by the Administrator
3 against the individual; or

4 “(B) obligations owed by the individual to
5 any insured depository institution, the FSLIC
6 Resolution Fund, or the Administrator.

7 “(c) EXPEDITED PROCEDURES FOR CERTAIN
8 CLAIMS.—

9 “(1) TIME FOR FILING NOTICE OF APPEAL.—

10 “(A) IN GENERAL.—The notice of appeal
11 of any order, whether interlocutory or final, en-
12 tered in any case brought by the Administrator
13 against an insured depository institution’s di-
14 rector, officer, employee, agent, attorney, ac-
15 countant, or appraiser or any other person em-
16 ployed by or providing services to an insured
17 depository institution shall be filed not later
18 than 30 days after the date of entry of the
19 order.

20 “(B) HEARING.—The hearing of the ap-
21 peal shall be decided not later than 120 days
22 after the date of the notice of the appeal.

23 “(C) DECISION.—The appeal shall be de-
24 cided not later than 180 days after the date of
25 the notice of the appeal.

1 “(2) SCHEDULING.—

2 “(A) IN GENERAL.—Consistent with sec-
3 tion 1657 of title 18, United States Code, a
4 court of the United States shall expedite the
5 consideration of any case brought by the Ad-
6 ministrator against an insured depository insti-
7 tution’s director, officer, employee, agent, attor-
8 ney, accountant, or appraiser or any other per-
9 son employed by or providing services to an in-
10 sured depository institution.

11 “(B) PRIORITY.—As far as practicable, a
12 court referred to in subparagraph (A) shall give
13 a case referred to in such paragraph priority on
14 the court’s docket.

15 “(3) JUDICIAL DISCRETION.—The court may
16 modify the schedule and limitations stated in para-
17 graphs (1) and (2) in a particular case, based on a
18 specific finding that the ends of justice that would
19 be served by making such a modification would out-
20 weigh the best interest of the public in having the
21 case resolved expeditiously.

22 “(d) SALE OF ASSETS TO ADMINISTRATOR.—

23 “(1) IN GENERAL.—Any conservator, receiver,
24 or liquidator appointed for any insured depository
25 institution in default, including the Administrator,

1 shall be entitled to offer the assets of such deposi-
2 tory institutions for sale to the Administrator or as
3 security for loans from the Administrator.

4 “(2) PROCEEDS.—The proceeds of every sale or
5 loan of assets to the Administrator shall be utilized
6 for the same purposes and in the same manner as
7 other funds realized from the liquidation of the as-
8 sets of such depository institutions.

9 “(3) RIGHTS AND POWERS OF ADMINIS-
10 TRATOR.—

11 “(A) IN GENERAL.—With respect to any
12 asset acquired or liability assumed pursuant to
13 this section, the Administrator shall have all of
14 the rights, powers, privileges, and authorities of
15 the Administrator as receiver under this sec-
16 tion.

17 “(B) RULE OF CONSTRUCTION.—Such
18 rights, powers, privileges, and authorities shall
19 be in addition to and not in derogation of any
20 rights, powers, privileges, and authorities other-
21 wise applicable to the Administrator.

22 “(C) FIDUCIARY RESPONSIBILITY.—In ex-
23 exercising any right, power, privilege, or authority
24 described in subparagraph (A), the Adminis-
25 trator shall continue to be subject to the fidu-

1 ciary duties and obligations of the Adminis-
2 trator as receiver to claimants against the in-
3 sured depository institution in receivership.

4 “(D) DISPOSITION OF ASSETS.—In exer-
5 cising any right, power, privilege, or authority
6 described in subparagraph (A) regarding the
7 sale or disposition of assets sold to the Admin-
8 istrator pursuant to paragraph (1), the Admin-
9 istrator shall conduct the Agency’s operations
10 in a manner which—

11 “(i) maximizes the net present value
12 return from the sale or disposition of such
13 assets;

14 “(ii) minimizes the amount of any loss
15 realized in the resolution of cases;

16 “(iii) ensures adequate competition
17 and fair and consistent treatment of
18 offerors;

19 “(iv) prohibits discrimination on the
20 basis of race, sex, or ethnic groups in the
21 solicitation and consideration of offers; and

22 “(v) maximizes the preservation of the
23 availability and affordability of residential
24 real property for low- and moderate-income
25 individuals.

1 “(4) LOANS.—The Administrator, in the Ad-
2 ministrator’s discretion, may make loans on the se-
3 curity of or may purchase and liquidate or sell any
4 part of the assets of an insured depository institu-
5 tion which may be in default at any time.

6 “(e) AGREEMENTS AGAINST INTERESTS OF ADMIN-
7 ISTRATOR.—No agreement which tends to diminish or de-
8 feat the interest of the Administrator in any asset ac-
9 quired by the Administrator under this section or sections
10 21A or 21C, either as security for a loan or by purchase
11 or as receiver of any insured depository institution, shall
12 be valid against the Administrator unless such agree-
13 ment—

14 “(1) is in writing,

15 “(2) was executed by the depository institution
16 and any person claiming an adverse interest under
17 the agreement, including the obligor, contempora-
18 neously with the acquisition of the asset by the de-
19 pository institution,

20 “(3) was approved by the board of directors of
21 the depository institution or the institution’s loan
22 committee, which approval shall be reflected in the
23 minutes of such board or committee, and

1 “(4) has been, continuously, from the time of
2 the agreement’s execution, an official record of the
3 depository institution.

4 “(f) FOREIGN INVESTIGATIONS.—The Administrator,
5 as conservator or receiver of any insured depository insti-
6 tution and for purposes of carrying out any power, author-
7 ity, or duty with respect to an insured depository institu-
8 tion—

9 “(1) may request the assistance of any foreign
10 banking authority and provide assistance to any for-
11 eign banking authority in accordance with section
12 8(v); and

13 “(2) may each maintain an office to coordinate
14 foreign investigations or investigations on behalf of
15 foreign banking authorities.

16 “(g) PROHIBITION ON ENTERING SECRECY AGREE-
17 MENTS AND PROTECTIVE ORDERS.—The Administrator
18 may not enter into any agreement or approve any protec-
19 tive order which prohibits the Administrator from disclos-
20 ing the terms of any settlement of an administrative or
21 other action for damages or restitution brought by the Ad-
22 ministrator in the Administrator’s capacity as conservator
23 or receiver for an insured depository institution.

24 “(n) BOND NOT REQUIRED; AGENTS; FEE.—

1 “(1) BONDS AND AGENTS.—The Administrator,
2 as receiver of an insured depository institution or
3 branch of a foreign bank—

4 “(A) shall not be required to furnish bond;
5 and

6 “(B) may appoint any person as agent to
7 assist the Agency in carrying out the Adminis-
8 trator’s duties as receiver.

9 “(2) FEES.—All fees, compensation, and ex-
10 penses of liquidation and administration shall be
11 fixed by the Administrator and may be paid by the
12 Administrator out of funds coming into the Adminis-
13 trator’s possession as receiver.

14 “(i) CONDITIONS APPLICABLE TO RESOLUTION PRO-
15 CEEDINGS.—

16 “(1) CONSIDERATION OF LOCAL ECONOMIC IM-
17 PACT REQUIRED.—The Administrator shall fully
18 consider the adverse economic impact on local com-
19 munities, including businesses and farms, of actions
20 to be taken by it during the administration and liq-
21 uidation of loans of a depository institution in de-
22 fault.

23 “(2) ACTIONS TO ALLEVIATE ADVERSE ECO-
24 NOMIC IMPACT TO BE CONSIDERED.—The actions
25 which the Administrator shall consider include the

1 release of proceeds from the sale of products and
2 services for family living and business expenses and
3 shortening the undue length of the decisionmaking
4 process for the acceptance of offers of settlement
5 contingent upon third party financing.

6 “(3) GUIDELINES REQUIRED.—The Adminis-
7 trator shall adopt and publish procedures and guide-
8 lines to minimize adverse economic effects caused by
9 the Administrator’s actions on individual debtors in
10 the community.

11 “(4) FINANCIAL SERVICES INDUSTRY IMPACT
12 ANALYSIS.—After the appointment of the Adminis-
13 trator as conservator or receiver for any insured de-
14 pository institution and before taking any action
15 under this section or section 13 in connection with
16 the resolution of such institution, the Administrator
17 shall—

18 “(A) evaluate the likely impact of the
19 means of resolution, and any action which the
20 Administrator may take in connection with such
21 resolution, on the viability of other insured de-
22 pository institutions in the same community;
23 and

24 “(B) take such evaluation into account in
25 determining the means for resolving the institu-

1 tion and establishing the terms and conditions
2 for any such action.

3 “(j) LIMITATION ON COURT ACTION.—Except as pro-
4 vided in this section, no court may take any action, except
5 at the request of the Administrator by regulation or order,
6 to restrain or affect the exercise of powers or functions
7 of the Administrator as a conservator or a receiver.

8 “(k) LIABILITY OF DIRECTORS AND OFFICERS.—A
9 director or officer of an insured depository institution may
10 be held personally liable for monetary damages in any civil
11 action by, on behalf of, or at the request or direction of
12 the Administrator, which action is prosecuted wholly or
13 partially for the benefit of the Administrator—

14 “(1) acting as conservator or receiver of such
15 institution,

16 “(2) acting based upon a suit, claim, or cause
17 of action purchased from, assigned by, or otherwise
18 conveyed by such receiver or conservator, or

19 “(3) acting based upon a suit, claim, or cause
20 of action purchased from, assigned by, or otherwise
21 conveyed in whole or in part by an insured deposi-
22 tory institution or an affiliate of an insured deposi-
23 tory institution in connection with assistance pro-
24 vided under section 13,

1 for gross negligence, including any similar conduct or con-
2 duct that demonstrates a greater disregard of a duty of
3 care (than gross negligence) including intentional tortious
4 conduct, as such terms are defined and determined under
5 applicable State law. Nothing in this paragraph shall im-
6 pair or affect any right of the Administrator under other
7 applicable law.

8 “(l) DAMAGES.—In any proceeding related to any
9 claim against an insured depository institution’s director,
10 officer, employee, agent, attorney, accountant, appraiser,
11 or any other party employed by or providing services to
12 an insured depository institution, recoverable damages de-
13 termined to result from the improvident or otherwise im-
14 proper use or investment of any insured depository institu-
15 tion’s assets shall include principal losses and appropriate
16 interest.

17 “(m) DISCLOSURES REQUIRED.—

18 “(1) BORROWERS.—Not later than 6 months
19 after being appointed as receiver for any failed in-
20 sured depository institution that received funds, the
21 Administrator, shall make available to the public the
22 name and loan balance of any borrower from the in-
23 stitution who—

24 “(A) was an executive officer, director, or
25 principal shareholder of the institution, or a re-

1 lated interest of any such person, as such terms
2 are defined in section 22(h) of the Federal Re-
3 serve Act; and

4 “(B) at the time that the receiver was ap-
5 pointed, was more than 90 days delinquent on
6 a loan.

7 “(2) TRANSACTIONS.—Not later than 12
8 months after being appointed receiver for any failed
9 insured depository institution that received funds,
10 the Administrator shall make available, and periodi-
11 cally update, a list of pending and settled lawsuits
12 brought by the Administrator involving transactions
13 (other than loans described in paragraph (1)) that
14 caused a material loss to such institution or to the
15 deposit insurance fund.

16 “(3) DEFINITIONS.—For purposes of this sub-
17 section—

18 “(A) FAILED DEPOSITORY INSTITUTION.—
19 The term ‘failed’, when used in connection with
20 a reference to an insured depository institution,
21 means an insured depository institution—

22 “(i) for which the Administrator has
23 been appointed as receiver or liquidating
24 agent; or

1 “(ii) with respect to which the Admin-
2 istrator or the Federal Deposit Insurance
3 Corporation has exercised the power to
4 provide assistance under section 13(c)(2)
5 of the Federal Deposit Insurance Act.

6 “(B) RECEIVED FUNDS.—The term ‘re-
7 ceived funds’, when used in connection with a
8 reference to an insured depository institution,
9 means a transaction in which an insured depos-
10 itory institution, any company that controls
11 such institution, or any acquiring institution re-
12 ceives cash or other valuable consideration from
13 the Federal Deposit Insurance Corporation or
14 any Federal Reserve bank (with respect to any
15 loan by such bank which is outstanding for
16 more than 30 days while the insured depository
17 institution is critically undercapitalized) within
18 the 1-year period before the failure of the in-
19 sured depository institution whether in the form
20 of a loan, a payment to depositors or other
21 creditors, the assumption of liabilities, or other-
22 wise.

23 “(n) PAYMENT AS DISCHARGE OF LIABILITY.—Pay-
24 ment of an insured deposit to any person by the Adminis-
25 trator shall discharge the Administrator, and payment of

1 a transferred deposit to any person by the new bank or
2 by an insured depository institution in which a transferred
3 deposit has been made available shall discharge the Ad-
4 ministrator and such new bank or other insured depository
5 institution, to the same extent that payment to such per-
6 son by the depository institution in default would have dis-
7 charged the institution from liability for the insured de-
8 posit.

9 “(o) RECOGNITION OF OWNERS.—Except as other-
10 wise prescribed by the Administrator, the Administrator,
11 any new bank, and any other insured depository institu-
12 tion shall not be required to recognize as the owner of
13 any portion of a deposit appearing on the records of the
14 depository institution in default under a name other than
15 that of the claimant, any person whose name or interest
16 as such owner is not disclosed on the records of such de-
17 pository institution in default as part owner of said de-
18 posit, if such recognition would increase the aggregate
19 amount of the insured deposits in such depository institu-
20 tion in default.

21 “(p) OFFSETS FOR OTHER LIABILITIES.—The Ad-
22 ministrator may withhold payment of such portion of the
23 insured deposit of any depositor in a depository institution
24 in default as may be required to provide for the payment
25 of the amount of any liability of such depositor to the de-

1 pository institution in default or the receiver for such in-
2 stitution, which is not offset against a claim due from such
3 depository institution, pending the determination and pay-
4 ment of such amount by such depositor or any other per-
5 son liable for such amount.

6 “(q) DISPOSITION OF UNCLAIMED ACCOUNTS.—

7 “(1) CASH DISTRIBUTIONS.—

8 “(A) IN GENERAL.—If, in connection with
9 any cash distribution under section 21C(d) to
10 insured depositors at any insured depository in-
11 stitution, any depositor fails to claim such pay-
12 ment for the depositor’s insured deposit from
13 the Administrator before the later of—

14 “(i) the end of the 3-month period be-
15 ginning on the date on which the Adminis-
16 trator mailed a notice of the distribution to
17 the depositor at the last-known address for
18 the depositor on the books of the institu-
19 tion; and

20 “(ii) the end of the 18-month period
21 beginning on the date of the appointment
22 of a receiver for such institution,
23 the Administrator shall notify the appropriate
24 State and offer to transfer to the custody of
25 such State an amount equal to the insured de-

1 posit of such depositor at such institution for
2 disposition by such State in accordance with
3 any State law which provides for the disposition
4 of abandoned or unclaimed property in the
5 State.

6 “(B) DISPOSITION OF CLAIMS IF STATE
7 DOES NOT ACCEPT CUSTODY.—

8 “(i) AVAILABILITY TO DEPOSITOR.—If
9 the appropriate State does not accept the
10 custody of the amount of any insured de-
11 posit which the Administrator offers to
12 transfer under subparagraph (A), the Ad-
13 ministrator shall permit the depositor (on
14 whose behalf such transfer was offered) to
15 make a claim against the Administrator
16 for an amount equal to the insured de-
17 posit.

18 “(ii) TERMINATION OF CLAIM AT END
19 OF RECEIVERSHIP.—If a depositor de-
20 scribed in clause (i) fails to make a claim
21 under such clause for the amount of the
22 insured deposit of such depositor at the in-
23 sured depository institution before the ter-
24 mination of the receivership—

1 “(I) all rights of the depositor
2 against the Administrator with re-
3 spect to such insured deposit shall be
4 barred; and

5 “(II) notwithstanding any provi-
6 sion of State law, the insured deposit
7 shall become the property of the Ad-
8 ministrator.

9 “(C) DISPOSITION OF CLAIMS IF STATE
10 DOES ACCEPT CUSTODY.—If the appropriate
11 State does accept the custody of the amount of
12 any insured deposit which the Administrator of-
13 fers to transfer under subparagraph (A), all
14 rights of the depositor against the Adminis-
15 trator with respect to such deposit shall be
16 barred as of the date of the transfer.

17 “(D) REVERSION TO ADMINISTRATOR
18 AFTER 10 YEARS AND TERMINATION OF ALL
19 CLAIMS OF DEPOSITOR.—If an insured deposit
20 is transferred to the custody of the appropriate
21 State and is not claimed by the depositor before
22 the end of the 10-year period beginning on the
23 date of the transfer—

24 “(i) the deposit shall be transferred
25 back to the Administrator;

1 “(ii) all rights of the depositor against
2 the State with respect to such insured de-
3 posit shall be barred as of the date of the
4 transfer to the Administrator; and

5 “(iii) notwithstanding any provision of
6 State law, the insured deposit shall become
7 the property of the Administrator.

8 “(2) TRANSFERRED DEPOSITS.—

9 “(A) IN GENERAL.—If the Administrator
10 satisfies the Administrator’s obligation under
11 section 21C(d)(1) by making available to each
12 depositor a transferred deposit in an insured
13 depository institution (including a new bank or
14 bridge bank), all rights of the depositor against
15 the Administrator with respect to the trans-
16 ferred deposit shall be barred as of the date of
17 the transfer except to the extent otherwise pro-
18 vided under subparagraph (B).

19 “(B) OFFER TO TRANSFER TO STATES.—
20 If any depositor fails to claim a transferred de-
21 posit from the insured depository institution to
22 which such transfer was made under section
23 21C(d)(1) before the end of the 18-month pe-
24 riod beginning on the date of the deposit trans-
25 fer to such institution—

1 “(i) the institution shall transfer the
2 insured deposit back to the Administrator;

3 “(ii) the Administrator shall notify
4 the appropriate State and offer to transfer
5 to the custody of such State an amount
6 equal to the insured deposit of such deposi-
7 tor at such institution for disposition by
8 such State in accordance with any State
9 law which provides for the disposition of
10 abandoned or unclaimed property in the
11 State; and

12 “(iii) subparagraphs (B), (C), and (D)
13 of paragraph (1) shall apply with respect
14 to such deposit as of the date the Adminis-
15 trator notifies the appropriate State pursu-
16 ant to clause (ii).

17 “(3) APPROPRIATE STATE DEFINED.—For pur-
18 poses of this subsection, the term ‘appropriate State’
19 means, with respect to any insured deposit for which
20 a cash distribution or transferred deposit is made
21 available under section 21C(d), the State whose laws
22 providing for the disposition of abandoned or un-
23 claimed property would have applied to such deposit
24 if no conservator or receiver had been appointed for

1 the depository institution (as of the date of the dis-
2 tribution or transfer).”.

3 (b) PAYMENT OF INSURED DEPOSITS AND OTHER
4 RESOLUTION COSTS BY FDIC.—Section 11 of the Federal
5 Deposit Insurance Act (12 U.S.C. 1821(f)) is amended by
6 striking subsections (f) and (g) and inserting the following
7 new subsections:

8 “(f) TRANSFERS TO RESOLUTION, ASSET MANAGE-
9 MENT, AND LIQUIDATION AGENCY.—

10 “(1) IN GENERAL.—Upon receipt of a request
11 from the Administrator of the Resolution, Asset
12 Management, and Liquidation Agency under section
13 13(c)(11) of this Act or section 21C(d) of the Fed-
14 eral Home Loan Bank Act, the Corporation shall
15 transfer to the Administrator the amount requested.

16 “(2) PAYMENTS FOR INSURED DEPOSITS.—All
17 transfers under paragraph (1) by the Corporation
18 pursuant to a request under section 21C(d) of the
19 Federal Home Loan Bank Act—

20 “(A) with respect to a closed Bank Insur-
21 ance Fund member, shall be made only from
22 the Bank Insurance Fund; and

23 “(B) with respect to a closed Savings As-
24 sociation Insurance Fund member, shall be

1 made only from the Savings Association Insur-
2 ance Fund.

3 “(3) PAYMENTS FOR SECTION 13(c) ASSIST-
4 ANCE.—All transfers under paragraph (1) by the
5 Corporation pursuant to a request under section
6 13(c)(11) shall be made in accordance with section
7 13(c)(12).

8 “(g) CLAIM OF CORPORATION AGAINST ADMINIS-
9 TRATOR.—In the case of any transfer to the Administrator
10 under subsection (f) with respect to any insured depository
11 institution, the Corporation shall have a claim against the
12 Administrator of the Resolution, Asset Management, and
13 Liquidation Agency for the amount by which the amount
14 realized by the Administrator pursuant to the subrogation
15 under section 21C(e) of the Federal Home Loan Bank Act
16 exceeds the administrative expenses incurred by the Ad-
17 ministrator as receiver of such institution (to the extent
18 such excess amount does not exceed the amount of the
19 transfer).”.

20 (c) ASSISTANCE AND ACQUISITION AUTHORITY OF
21 ADMINISTRATOR AND FDIC.—

22 (1) ASSISTANCE POWERS OF THE AGENCY AND
23 THE FDIC.—Section 13(c) of the Federal Deposit In-
24 surance Act (12 U.S.C. 1823) is amended to read as
25 follows:

1 “(c) FINANCIAL ASSISTANCE FOR FAILED OR FAIL-
2 ING INSURED DEPOSITORY INSTITUTIONS.—

3 “(1) ASSISTANCE AUTHORIZED.—The appro-
4 priate agency may, in the sole discretion of the head
5 of the agency and upon such terms and conditions
6 as the head of the agency may prescribe, to make
7 loans to, to make deposits in, to purchase the assets
8 or securities of, to assume the liabilities of, or to
9 make contributions to, any insured depository insti-
10 tution—

11 “(A) if such action is taken to prevent the
12 default of such insured depository institution;

13 “(B) if, with respect to an insured deposi-
14 tory institution in default, such action is taken
15 to restore such institution to normal operation;
16 or

17 “(C) if, when severe financial conditions
18 exist which threaten the stability of a signifi-
19 cant number of insured depository institutions
20 or of insured depository institutions possessing
21 significant financial resources, such action is
22 taken in order to lessen the risk to the appro-
23 priate agency posed by such insured depository
24 institution under such threat of instability.

1 “(2) ASSISTANCE IN CONNECTION WITH MERG-
2 ERS AND ACQUISITIONS.—

3 “(A) IN GENERAL.—In order to facilitate a
4 merger or consolidation of a qualified insured
5 depository institution with another insured de-
6 pository institution, the sale of any asset of, or
7 the assumption of any liability of, a qualified
8 insured depository institution by another in-
9 sured depository institution, or the acquisition
10 of the stock of a qualified insured depository in-
11 stitution, the appropriate agency may, in the
12 sole discretion of the head of the agency and
13 upon such terms and conditions as the head of
14 the agency may prescribe—

15 “(i) purchase any such assets or as-
16 sume any such liabilities;

17 “(ii) make loans or contributions to,
18 or deposits in, or purchase the securities
19 of, the acquiring insured depository insti-
20 tution or the company which controls or
21 will acquire control of the acquiring in-
22 sured depository institution; and

23 “(iii) guarantee the acquiring insured
24 depository institution, or the company
25 which controls or will acquire control of

1 the acquiring insured depository institu-
2 tion, against loss by reason of such institu-
3 tion's acquisition of a qualified insured de-
4 pository institution or by reason of such
5 company acquiring control of such acquir-
6 ing insured depository institution.

7 “(B) STAY OF OTHER ACTION ON RE-
8 QUEST.—At the request of the appropriate
9 agency, any action to which the appropriate
10 agency is or becomes a party by acquiring any
11 asset or exercising any other authority under
12 this section shall be stayed by the court of ju-
13 risdiction for a period of 60 days.

14 “(C) QUALIFIED INSURED DEPOSITORY IN-
15 STITUTION DEFINED.—For purposes of sub-
16 paragraph (A), the term ‘qualified insured de-
17 pository institution’ means an insured deposi-
18 tory institution which—

19 “(i) is in default;

20 “(ii) in the judgment of the Board of
21 Directors, is in danger of default; or

22 “(iii) when severe financial conditions
23 exist which threaten the stability of a sig-
24 nificant number of insured depository in-
25 stitutions or of insured depository institu-

1 tions possessing significant financial re-
2 sources, is determined by the appropriate
3 agency, in the sole discretion of the head
4 of the agency, to require assistance under
5 subparagraph (A) in order to lessen the
6 risk to any appropriate agency or deposit
7 insurance fund posed by such insured de-
8 pository institution under such threat of
9 instability.

10 “(D) ADDITIONAL DEFINITIONS.—For
11 purposes of this paragraph—

12 “(i) ACQUIRING INSURED DEPOSITORY
13 INSTITUTION.—The term ‘acquiring in-
14 insured depository institution’ means an in-
15 insured depository institution which acquires
16 (as defined in subsection (f)(8)(B)) an-
17 other insured depository institution.

18 “(ii) ACQUISITION.—The term ‘acqui-
19 sition’ means a transaction described in
20 any clause of subsection (f)(8)(B).

21 “(3) APPROPRIATE AGENCY DEFINED.—For
22 purposes of this subsection and subsections (f) and
23 (k)—

24 “(A) IN GENERAL.—The term ‘appropriate
25 agency’ means—

1 “(i) the Corporation, in the case of
2 any payments authorized to be made under
3 this section to, or on behalf of, an insured
4 depository institution for which a conserva-
5 tor or receiver has not been appointed; and

6 “(ii) the Resolution, Asset Manage-
7 ment, and Liquidation Agency, in the case
8 of any payments authorized to be made
9 under this section to, or on behalf of, an
10 insured depository institution for which a
11 conservator or receiver has been appointed.

12 “(B) HEAD OF THE APPROPRIATE AGEN-
13 CY.—The term ‘head of the appropriate agency’
14 means—

15 “(i) the Board of Directors, in the
16 case of the Corporation; and

17 “(ii) the Administrator, in the case of
18 the Resolution, Asset Management, and
19 Liquidation Agency.

20 “(4) LEAST-COST RESOLUTION REQUIRED.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of this Act, the appropriate
23 agency may not exercise any authority under
24 this subsection or subsection (d), (f), (h), or (k)

1 of this section with respect to any insured de-
2 pository institution unless—

3 “(i) the agency determines that the
4 exercise of such authority is necessary to
5 meet the obligation of the Corporation to
6 provide insurance coverage for the insured
7 deposits in such institution; and

8 “(ii) the total amount of any expendi-
9 tures by the Administrator or the Corpora-
10 tion and any obligations incurred by the
11 Administrator or the Corporation (includ-
12 ing any immediate and long-term obliga-
13 tion of any such agency and any direct or
14 contingent liability for future payment by
15 any such agency) in connection with the
16 exercise of any such authority with respect
17 to such institution is the least costly to the
18 applicable deposit insurance fund of all
19 possible methods for meeting any obliga-
20 tion of the Administrator or the Corpora-
21 tion under this section or section 21C or
22 21D of the Federal Home Loan Bank Act.

23 “(B) DETERMINING LEAST COSTLY AP-
24 PROACH.—In determining how to satisfy the
25 appropriate agency’s obligations to an institu-

tion’s insured depositors at the least possible cost to the deposit insurance fund, the agency shall comply with the following provisions:

“(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The appropriate agency shall—

“(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

“(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

“(III) retain the documentation for not less than 5 years.

“(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the deposit insurance fund.

1 “(C) TIME OF DETERMINATION.—

2 “(i) GENERAL RULE.—For purposes
3 of this subsection, the determination of the
4 costs of providing any assistance under
5 paragraph (1) or (2) or any other provision
6 of this section with respect to any deposi-
7 tory institution shall be made as of the
8 date on which the appropriate agency
9 makes the determination to provide such
10 assistance to the institution under this sec-
11 tion.

12 “(ii) RULE FOR LIQUIDATIONS.—For
13 purposes of this subsection, the determina-
14 tion of the costs of liquidation of any de-
15 pository institution shall be made as of the
16 earliest of—

17 “(I) the date on which a con-
18 servator is appointed for such institu-
19 tion;

20 “(II) the date on which a receiver
21 is appointed for such institution; or

22 “(III) the date on which the ap-
23 propriate agency makes any deter-
24 mination to provide any assistance

1 under this section with respect to such
2 institution.

3 “(D) LIQUIDATION COSTS.—In determin-
4 ing the cost of liquidating any depository insti-
5 tution for the purpose of comparing the costs
6 under subparagraph (A) (with respect to such
7 institution), the amount of such cost may not
8 exceed the amount which is equal to the sum of
9 the insured deposits of such institution as of
10 the earliest of the dates described in subpara-
11 graph (C), minus the present value of the total
12 net amount the Administrator could reasonably
13 expect to receive from the disposition of the as-
14 sets of such institution in connection with such
15 liquidation.

16 “(E) DEPOSIT INSURANCE FUNDS AVAIL-
17 ABLE FOR INTENDED PURPOSE ONLY.—

18 “(i) IN GENERAL.—After December
19 31, 1994, or at such earlier time as the ap-
20 propriate agency determines to be appro-
21 priate, the appropriate agency may not
22 take any action, directly or indirectly, with
23 respect to any insured depository institu-
24 tion that would have the effect of increas-

1 ing losses to any insurance fund by pro-
2 tecting—

3 “(I) depositors for more than the
4 insured portion of deposits (deter-
5 mined without regard to whether such
6 institution is liquidated); or

7 “(II) creditors other than deposi-
8 tors.

9 “(ii) DEADLINE FOR REGULATIONS.—
10 The appropriate agency shall prescribe reg-
11 ulations to implement clause (i) not later
12 than January 1, 1994, and the regulations
13 shall take effect not later than January 1,
14 1995.

15 “(iii) PURCHASE AND ASSUMPTION
16 TRANSACTIONS.—No provision of this sub-
17 paragraph shall be construed as prohibit-
18 ing the Administrator from allowing any
19 person who acquires any assets or assumes
20 any liabilities of any insured depository in-
21 stitution for which the Administrator has
22 been appointed conservator or receiver to
23 acquire uninsured deposit liabilities of such
24 institution so long as the insurance fund
25 does not incur any loss with respect to

1 such deposit liabilities in an amount great-
2 er than the loss which would have been in-
3 curred with respect to such liabilities if the
4 institution had been liquidated.

5 “(F) DISCRETIONARY DETERMINATIONS.—

6 Any determination which the appropriate agen-
7 cy may make under this paragraph shall be
8 made in the sole discretion of the agency.

9 “(G) SYSTEMIC RISK.—

10 “(i) EMERGENCY DETERMINATION BY
11 SECRETARY OF THE TREASURY.—Notwith-
12 standing subparagraphs (A) and (E), if,
13 upon the written recommendation of the
14 head of the appropriate agency (in the case
15 of the Corporation, upon a vote of not less
16 than two-thirds of the members of the
17 Board of Directors) and the Board of Gov-
18 ernors of the Federal Reserve System
19 (upon a vote of not less than two-thirds of
20 the members of such Board), the Secretary
21 of the Treasury (in consultation with the
22 President) determines that—

23 “(I) the appropriate agency’s
24 compliance with subparagraphs (A)
25 and (E) with respect to an insured de-

1 pository institution would have serious
2 adverse effects on economic conditions
3 or financial stability; and

4 “(II) any action or assistance
5 under this subparagraph would avoid
6 or mitigate such adverse effects,
7 the agency may take other action or pro-
8 vide assistance under this section as nec-
9 essary to avoid or mitigate such effects.

10 “(ii) REPAYMENT OF LOSS.—The Cor-
11 poration shall recover, to the appropriate
12 insurance fund, any loss arising from any
13 action taken or assistance provided with
14 respect to an insured depository institution
15 under clause (i) expeditiously from 1 or
16 more emergency special assessments on the
17 members of the insurance fund (of which
18 such institution is a member) equal to the
19 product of—

20 “(I) an assessment rate estab-
21 lished by the Corporation; and

22 “(II) the amount of each mem-
23 ber’s average total assets during the
24 semiannual period, minus the sum of
25 the amount of the member’s average

1 total tangible equity and the amount
2 of the member's average total subordi-
3 nated debt.

4 “(iii) DOCUMENTATION REQUIRED.—

5 The Secretary of the Treasury shall—

6 “(I) document any determination
7 under clause (i); and

8 “(II) retain the documentation
9 for review under clause (iv).

10 “(iv) GAO REVIEW.—The Comptroller
11 General of the United States shall review
12 and report to the Congress on any deter-
13 mination under clause (i), including—

14 “(I) the basis for the determina-
15 tion;

16 “(II) the purpose for which any
17 action was taken pursuant to such
18 clause; and

19 “(III) the likely effect of the de-
20 termination and such action on the in-
21 centives and conduct of insured depos-
22 itory institutions and uninsured de-
23 positors.

24 “(v) NOTICE.—

1 “(I) IN GENERAL.—The Sec-
2 retary of the Treasury shall provide
3 written notice of any determination
4 under clause (i) to the Committee on
5 Banking, Housing, and Urban Affairs
6 of the Senate and the Committee on
7 Banking, Finance and Urban Affairs
8 of the House of Representatives.

9 “(II) DESCRIPTION OF BASIS OF
10 DETERMINATION.—The notice under
11 subclause (I) shall include a descrip-
12 tion of the basis for any determination
13 under clause (i).

14 “(H) RULE OF CONSTRUCTION.—No provi-
15 sion of law shall be construed as permitting the
16 appropriate agency to take any action prohib-
17 ited by this paragraph unless such provision ex-
18 pressly provides, by direct reference to this
19 paragraph, that this paragraph shall not apply
20 with respect to such action.

21 “(5) PROHIBITION ON PURCHASE OF COMMON
22 STOCK.—

23 “(A) IN GENERAL.—The appropriate agen-
24 cy may not use any authority under this sub-

1 section to purchase the voting or common stock
2 of an insured depository institution.

3 “(B) AUTHORITY TO ENTER INTO AGREE-
4 MENTS.—Subparagraph (A) shall not be con-
5 strued as limiting the ability of the appropriate
6 agency to enter into and enforce covenants and
7 agreements that the agency determines to be
8 necessary to protect the financial interest of the
9 agency and the deposit insurance funds.

10 “(6) TAX DEFERRED STATUS.—

11 “(A) IN GENERAL.—During any period in
12 which an insured depository institution has re-
13 ceived assistance under this subsection and
14 such assistance is still outstanding, such in-
15 sured depository institution may defer the pay-
16 ment of any State or local tax which is deter-
17 mined on the basis of the deposits held by such
18 insured depository institution or of the interest
19 or dividends paid on such deposits.

20 “(B) REPAYMENT OF DEFERRED TAXES.—

21 “(i) IN GENERAL.—When an insured
22 depository institution referred to in sub-
23 paragraph (A) no longer has any outstand-
24 ing assistance, such insured depository in-

1 stitution shall pay all taxes which were de-
2 ferred under subparagraph (A).

3 “(ii) REPAYMENT PLAN.—Payments
4 pursuant to clause (i) shall be made in ac-
5 cordance with a payment plan established
6 by the appropriate agency, after consulta-
7 tion with the applicable State and local
8 taxing authorities.

9 “(7) RULE RELATING TO TRANSFERS OF TRUST
10 BUSINESS.—Any transfer under paragraph (2)(A) of
11 any assets or liabilities associated with any trust
12 business of an insured depository institution in de-
13 fault shall be effective without any State or Federal
14 approval, assignment, or consent with respect to
15 such transfer.

16 “(8) ASSISTANCE BEFORE APPOINTMENT OF
17 CONSERVATOR OR RECEIVER.—

18 “(A) IN GENERAL.—Subject to the least-
19 cost provisions of paragraph (4), the Corpora-
20 tion shall consider providing direct financial as-
21 sistance under this section for depository insti-
22 tutions before the appointment of a conservator
23 or receiver for such institution only under the
24 following circumstances:

1 “(i) TROUBLED CONDITION CRI-
2 TERIA.—The Corporation determines—

3 “(I) grounds for the appointment
4 of a conservator or receiver exist or
5 likely will exist in the future unless
6 the depository institution’s capital lev-
7 els are increased; and

8 “(II) it is unlikely that the insti-
9 tution can meet all currently applica-
10 ble capital standards without assist-
11 ance.

12 “(ii) OTHER CRITERIA.—The deposi-
13 tory institution meets the following cri-
14 teria:

15 “(I) The appropriate Federal
16 banking agency and the Corporation
17 have determined that, during such pe-
18 riod of time preceding the date of
19 such determination as the agency or
20 the Corporation considers to be rel-
21 evant, the institution’s management
22 has been competent and has complied
23 with applicable laws, rules, and super-
24 visory directives and orders.

1 “(II) The institution’s manage-
2 ment did not engage in any insider
3 dealing, speculative practice, or other
4 abusive activity.

5 “(B) PUBLIC DISCLOSURE.—Any deter-
6 mination under this paragraph to provide as-
7 sistance under this section shall be made in
8 writing and published in the Federal Register.

9 “(9) SUBORDINATION OF ASSISTANCE.—Any
10 assistance provided under this subsection may be in
11 subordination to the rights of depositors and other
12 creditors.

13 “(10) ITEMS IN ANNUAL REPORT.—In the ap-
14 propriate agency’s annual report to the Congress,
15 the agency shall report the total amount saved, or
16 the amount which the agency estimates has been
17 saved, by exercising any authority under this sub-
18 section.

19 “(11) REQUEST FOR FUNDS FROM FDIC.—
20 Upon making a determination to make any payment
21 under this subsection to or on behalf of any insured
22 depository institution which is a Bank Insurance
23 Fund member or a Savings Association Insurance
24 Fund member, the Administrator shall request the
25 Federal Deposit Insurance Corporation to transfer

1 to the Administrator the amount required for the
2 Administrator to make such payment.

3 “(12) SOURCE OF FUNDS.—

4 “(A) BANK INSURANCE FUND.—If the de-
5 pository institution to which, or on whose be-
6 half, a payment is made under this subsection
7 is a Bank Insurance Fund member, only funds
8 held in the Bank Insurance Fund may be—

9 “(i) used by the Corporation to make
10 such payments; or

11 “(ii) transferred to the Administrator
12 to make such payments pursuant to a re-
13 quest under paragraph (11).

14 “(B) SAVINGS ASSOCIATION INSURANCE
15 FUND.—If the depository institution to which,
16 or on whose behalf, a payment is made under
17 this subsection is a Savings Association Insur-
18 ance Fund member (including institutions for
19 which the Resolution Trust Corporation was ap-
20 pointed as a conservator or receiver before such
21 corporation was abolished), only funds held in
22 the Savings Association Insurance Fund may
23 be—

24 “(i) used by the Corporation to make
25 such payments; or

1 “(ii) transferred to the Administrator
2 to make such payments pursuant to a re-
3 quest under paragraph (11).

4 “(C) ASSOCIATIONS SUBJECT TO FSLIC
5 RESOLUTION FUND.—If the depository institu-
6 tion to which, or on whose behalf, a payment is
7 made under this subsection is an institution for
8 which the Administrator has been appointed
9 conservator or receiver under section 11A(a)(5)
10 of the Federal Deposit Insurance Act as the
11 successor of the Corporation, funds for such
12 payments shall be obtained by the Adminis-
13 trator from the Administrator’s own resources
14 under subsections (b) and (c) of section 11A.

15 “(13) ASSISTANCE FOR ACQUISITIONS BY
16 OTHER PERSONS.—The appropriate agency may pro-
17 vide any person which acquires (as defined in sub-
18 section (f)(8)(B)) an insured depository institution
19 under subsection (f) or (k) with any financial assist-
20 ance as the agency could provide to an insured de-
21 pository institution under this subsection.”.

22 (2) INTERSTATE EMERGENCY BANK ACQUI-
23 TION AUTHORITY OF THE AGENCY AND THE FDIC.—
24 Section 13(f) of the Federal Deposit Insurance Act
25 (12 U.S.C. 1823(f)) is amended to read as follows:

1 “(f) ASSISTED EMERGENCY INTERSTATE ACQUI-
2 TIONS.—

3 “(1) AUTHORITY AVAILABLE ONLY WITH SUB-
4 SECTION (c) ASSISTANCE.—This subsection shall
5 apply only to an acquisition of an insured bank or
6 a holding company by an out-of-State bank or sav-
7 ings association or an out-of-State holding company
8 for which the appropriate agency provides assistance
9 under subsection (c).

10 “(2) FAILED BANKS.—

11 “(A) IN GENERAL.—If an insured bank
12 with total assets of \$500,000,000 or more (as
13 determined from its most recent report of con-
14 dition) is in default, the Administrator, as re-
15 ceiver, may, in the Administrator’s discretion
16 and upon such terms and conditions as the Ad-
17 ministrator may determine, arrange the sale of
18 assets of the bank in default and the assump-
19 tion of the liabilities of the bank in default, in-
20 cluding the sale of such assets to and the as-
21 sumption of such liabilities by an insured depos-
22 itory institution which is—

23 “(i) located in the State in which the
24 bank in default was chartered; and

1 “(ii) controlled by an out-of-State
2 bank or an out-of-State depository institu-
3 tion holding company.

4 “(B) APPROVAL OF OTHER REGULATORY
5 AGENCIES.—No transaction may be approved
6 by the Administrator under this paragraph
7 without the approval of the primary Federal or
8 State supervisor of all parties to the trans-
9 action, to the extent such approval is otherwise
10 lawfully required.

11 “(C) CONSULTATION WITH STATE BANK
12 SUPERVISOR.—

13 “(i) IN GENERAL.—Before making a
14 determination to take any action under
15 subparagraph (A), the Administrator shall
16 consult the State bank supervisor of the
17 State in which the insured bank in default
18 was chartered.

19 “(ii) OPPORTUNITY FOR OBJEC-
20 TION.— The State bank supervisor shall be
21 given a reasonable opportunity, and in no
22 event less than 48 hours, to object to the
23 approval by the Administrator of a trans-
24 action under this paragraph.

1 “(iii) NOTICE BEFORE APPOINT-
2 MENT.—Notice under clause (ii) may be
3 provided by the Administrator with respect
4 to a bank in default before a receiver is ap-
5 pointed for the bank, if the Administrator
6 determines an appointment of a receiver is
7 pending.

8 “(iv) WRITTEN NOTICE OF DETER-
9 MINATION.—If the State bank supervisor
10 objects to a transaction under this para-
11 graph during the period available for such
12 objection in accordance with clause (ii), the
13 Administrator shall provide to the State
14 bank supervisor a written certification of
15 the Administrator’s determination with re-
16 spect to such objection as soon as prac-
17 ticable after the determination is made.

18 “(3) EMERGENCY ACQUISITIONS OF INSURED
19 BANKS IN DANGER OF DEFAULT.—

20 “(A) ACQUISITION OF INSURED BANKS IN
21 DANGER OF DEFAULT.—1 or more out-of-State
22 banks or out-of-State depository institution
23 holding companies may acquire and retain all or
24 part of the shares or assets of, or otherwise ac-
25 quire and retain—

1 “(i) an insured bank in danger of de-
2 fault which has total assets of
3 \$500,000,000 or more; or

4 “(ii) 2 or more affiliated insured
5 banks in danger of default which have ag-
6 gregate total assets of \$500,000,000 or
7 more, if the aggregate total assets of such
8 banks is equal to or greater than 33 per-
9 cent of the aggregate total assets of all af-
10 filiated insured banks.

11 “(B) ACQUISITION OF A HOLDING COM-
12 PANY OR OTHER BANK AFFILIATE.—If 1 or
13 more out-of-State banks or out-of-State deposi-
14 tory institution holding companies acquire 1 or
15 more affiliated insured banks under subpara-
16 graph (A) the aggregate total assets of which is
17 equal to or greater than 33 percent of the ag-
18 gregate total assets of all affiliated insured
19 banks, any such out-of-State bank or out-of-
20 State insured depository holding company may
21 also, as part of the same transaction, acquire
22 and retain the shares or assets of, or otherwise
23 acquire and retain—

1 “(i) the holding company which con-
2 trols the affiliated insured banks so ac-
3 quired; or

4 “(ii) any other affiliated insured bank.

5 “(C) REQUEST FOR ASSISTANCE BY COR-
6 PORATE BOARD OF DIRECTORS.—The Corpora-
7 tion may assist an acquisition or merger au-
8 thorized under subparagraph (A) only if the
9 board of directors or trustees of each insured
10 bank in danger of default which is being ac-
11 quired has requested in writing that the Cor-
12 poration assist the acquisition or merger.

13 “(D) CERTAIN ACQUISITIONS AUTHORIZED
14 AFTER ASSISTANCE IS PROVIDED.—Notwith-
15 standing paragraph (1), if—

16 “(i) at any time after the date of the
17 enactment of the Financial Institutions
18 Emergency Acquisitions Amendments of
19 1987, the Corporation provides any assist-
20 ance under subsection (c) to an insured
21 bank; and

22 “(ii) at the time such assistance is
23 granted, the insured bank, the holding
24 company which controls the insured bank
25 (if any), or any affiliated insured bank is

1 eligible to be acquired by an out-of-State
2 bank or out-of-State depository institution
3 holding company under this paragraph,
4 the insured bank, the holding company, and
5 such other affiliated insured bank shall remain
6 eligible, subject to such terms and conditions as
7 the Corporation (in the discretion of the Board
8 of Directors) may impose, to be acquired by an
9 out-of-State bank or out-of-State depository in-
10 stitution holding company under this paragraph
11 as long as any portion of such assistance re-
12 mains outstanding.

13 “(E) STATE BANK SUPERVISOR AP-
14 PROVAL.—The Corporation may take no final
15 action in connection with any acquisition under
16 this paragraph unless the State bank supervisor
17 of the State in which the bank in danger of de-
18 fault is located approves the acquisition.

19 “(F) OTHER REQUIREMENTS NOT AF-
20 FECTED.—No provision of this paragraph shall
21 be construed as affecting any other requirement
22 under Federal or State law for regulatory ap-
23 proval of an acquisition under this paragraph.

24 “(G) ACQUISITION MAY BE CONDITIONED
25 ON RECEIPT OF CONSIDERATION FOR CORPORA-

1 TION'S ASSISTANCE.—Any acquisition described
2 in subparagraph (D) may be conditioned on the
3 receipt of such consideration for the Corpora-
4 tion's assistance to the extent the Board of Di-
5 rectors deems appropriate.

6 “(4) COORDINATION WITH OTHER PROVISIONS
7 OF LAW.—

8 “(A) ACQUISITIONS NOT SUBJECT TO CER-
9 TAIN OTHER LAWS.—Section 3(d) of the Bank
10 Holding Company Act of 1956, any provision of
11 State law, and section 10(e)(3) of the Home
12 Owners' Loan Act shall not apply so as to pro-
13 hibit any acquisition under paragraph (2) or
14 (3), except that an out-of-State bank may make
15 such an acquisition only if such ownership is
16 otherwise specifically authorized.

17 “(B) OPERATION OF BRANCHES.—Any
18 subsidiary created by operation of this sub-
19 section may retain and operate any existing
20 branch or branches of the institution merged
21 with or acquired under paragraph (2) or (3),
22 but otherwise shall be subject to the conditions
23 upon which a national bank may establish and
24 operate branches in the State in which such in-
25 sured institution is located.

1 “(C) CHANGE OF HEADQUARTERS.—No
2 insured institution acquired under this sub-
3 section shall, after such acquisition, move the
4 principal office or any branch office of the insti-
5 tution which, if the institution were a national
6 bank, the institution would be prohibited from
7 moving.

8 “(D) SUBSEQUENT NONEMERGENCY
9 INTERSTATE ACQUISITIONS SUBJECT TO STATE
10 LAW.—

11 “(i) IN GENERAL.—Any out-of-State
12 bank holding company which acquires con-
13 trol of an insured bank in any State under
14 paragraph (2) or (3) may acquire any
15 other insured bank and establish branches
16 in such State to the same extent as a bank
17 holding company whose insured bank sub-
18 sidiaries’ operations are principally con-
19 ducted in such State may acquire any
20 other insured bank or establish branches.

21 “(ii) DELAYED DATE OF APPLICABIL-
22 ITY.—Clause (i) shall not apply with re-
23 spect to any out-of-State bank holding
24 company referred to in such clause before
25 the earlier of—

1 “(I) the end of the 2-year period
2 beginning on the date the acquisition
3 referred to in such clause with respect
4 to such company is consummated; or

5 “(II) the end of any period estab-
6 lished under State law during which
7 such out-of-State bank holding com-
8 pany may not be treated as a bank
9 holding company whose insured bank
10 subsidiaries’ operations are principally
11 conducted in such State for purposes
12 of acquiring other insured banks or
13 establishing bank branches.

14 “(iii) DETERMINATION OF PRIN-
15 CIPALLY CONDUCTED.—For purposes of
16 this subparagraph, the State in which the
17 operations of a holding company’s insured
18 bank subsidiaries are principally conducted
19 is the State determined under section 3(d)
20 of the Bank Holding Company Act of 1956
21 with respect to such holding company.

22 “(E) CERTAIN STATE INTERSTATE BANK-
23 ING LAWS INAPPLICABLE.—Any holding com-
24 pany which acquires control of any insured
25 bank or holding company under subparagraph

1 (D) or paragraph (2) or (3) shall not, by reason
2 of such acquisition, be required under the law
3 of any State to divest any other insured bank
4 or be prevented from acquiring any other bank
5 or holding company.

6 “(5) SOLICITATION OF OFFERS.—In determin-
7 ing whether to arrange a sale of assets and assump-
8 tion of liabilities or an acquisition or a merger under
9 the authority of paragraph (2) or (3), the appro-
10 priate agency may solicit such offers or proposals as
11 are practicable from any prospective purchasers or
12 merger partners the agency determines, in the head
13 of the agency’s sole discretion, are qualified and are
14 capable of acquiring the assets and liabilities of the
15 bank in default or in danger of default.

16 “(6) CONSIDERATION OF OFFERS.—

17 “(A) LOWEST ACCEPTABLE OFFER.—If,
18 after receiving offers, the lowest acceptable
19 offer is from an offeror which is not an existing
20 in-State bank of the same type as the bank that
21 is in default or in danger of default (or, if such
22 bank is an insured bank other than a mutual
23 savings bank, the lowest acceptable offer is not
24 from an in-State holding company), the appro-
25 priate agency shall permit the offeror which

1 makes the initial lowest acceptable offer and
2 each offeror who makes an offer the estimated
3 cost of which to the agency is within 15 percent
4 or \$15,000,000, whichever is less, of the initial
5 lowest acceptable offer to submit a new offer.

6 “(B) MINIMIZE COST.—In considering au-
7 thorizations under this subsection, the appro-
8 priate agency shall give consideration to the
9 need to minimize the cost of financial assistance
10 and to the maintenance of specialized deposi-
11 tory institutions.

12 “(C) PRIORITIES.—The appropriate agen-
13 cy shall authorize transactions under this sub-
14 section in order of the following priorities:

15 “(i) First, between depository institu-
16 tions of the same type within the same
17 State.

18 “(ii) Second, between depository insti-
19 tutions of the same type—

20 “(I) in different States which by
21 statute specifically authorize such ac-
22 quisitions; or

23 “(II) in the absence of such stat-
24 utes, in different States which are
25 contiguous.

1 “(iii) Third, between depository insti-
2 tutions of the same type in different States
3 other than the States described in clause
4 (ii).

5 “(iv) Fourth, between depository insti-
6 tutions of different types in the same
7 State.

8 “(v) Fifth, between depository institu-
9 tions of different types—

10 “(I) in different States which by
11 statute specifically authorize such ac-
12 quisitions; or

13 “(II) in the absence of such stat-
14 utes, in different States which are
15 contiguous.

16 “(vi) Sixth, between depository insti-
17 tutions of different types in different
18 States other than the States described in
19 clause (v).

20 “(D) MINORITY BANK PRIORITY.—In the
21 case of a minority-controlled bank, the appro-
22 priate agency shall seek an offer from other mi-
23 nority-controlled banks before proceeding with
24 the bidding priorities set forth in subparagraph
25 (B).

1 “(E) AGENCY DETERMINATIONS ARE DE-
2 TERMINATIVE.—In determining the cost of of-
3 fers and reoffers, the appropriate agency’s cal-
4 culations and estimations shall be determina-
5 tive.

6 “(F) TIME LIMITS.—The appropriate
7 agency may set reasonable time limits on offers
8 and reoffers.

9 “(7) ANTITRUST PROVISION.—No transaction
10 may be authorized under paragraph (2) or (3)—

11 “(A) which would result in a monopoly, or
12 which would be in furtherance of any combina-
13 tion or conspiracy to monopolize or to attempt
14 to monopolize the business of banking in any
15 part of the United States;

16 “(B) whose effect in any section of the
17 country may be substantially to lessen competi-
18 tion, or to tend to create a monopoly, or which
19 in any other manner would be in restraint of
20 trade, unless the appropriate agency finds that
21 the anticompetitive effects of the proposed
22 transactions are clearly outweighed in the pub-
23 lic interest by the probable effect of the trans-
24 action in meeting the convenience and needs of
25 the community to be served; or

1 “(C) if, in the opinion of the appropriate
2 agency, the acquisition threatens the safety and
3 soundness of the acquirer or does not result in
4 the future viability of the resulting depository
5 institution.

6 “(8) DEFINITION.—For purposes of this sub-
7 section—

8 “(A) IN-STATE DEPOSITORY INSTITUTION
9 OR IN-STATE HOLDING COMPANY.—The terms
10 ‘in-State depository institution’ and ‘in-State
11 holding company’ mean an existing insured de-
12 pository institution currently operating in the
13 State in which the bank in default or in danger
14 of default is chartered and a company that con-
15 trols an insured depository institution subsidi-
16 ary in the State in which the bank in default
17 or in danger of default is chartered, respec-
18 tively.

19 “(B) ACQUIRE.—The term ‘acquire’ means
20 to acquire, directly or indirectly, ownership or
21 control through—

22 “(i) an acquisition of shares;

23 “(ii) an acquisition of assets or as-
24 sumption of liabilities;

25 “(iii) a merger or consolidation; or

1 “(iv) any similar transaction.

2 “(C) AFFILIATED INSURED BANK.—The
3 term ‘affiliated insured bank’ means—

4 “(i) when used in connection with a
5 reference to a depository institution hold-
6 ing company, an insured bank which is a
7 subsidiary of such holding company; and

8 “(ii) when used in connection with a
9 reference to 2 or more insured banks, in-
10 sured banks which are subsidiaries of the
11 same holding company.

12 “(D) SUBSIDIARY.—Notwithstanding sec-
13 tion 3(w)(4), the term ‘subsidiary’ has the
14 meaning given to such term in section 2(d) of
15 the Bank Holding Company Act of 1956.

16 “(E) LOWEST ACCEPTABLE OFFER.—The
17 term ‘lowest acceptable offer’ means the offer
18 presenting the lowest expense to the appro-
19 priate agencies that is in a form and with con-
20 ditions acceptable to the appropriate agency.

21 “(9) NO ASSISTANCE AUTHORIZED FOR CER-
22 TAIN SUBSIDIARIES OF HOLDING COMPANIES.—

23 “(A) IN GENERAL.—The appropriate agen-
24 cy shall not provide any assistance to a subsidi-
25 ary, other than a subsidiary that is an insured

1 depository institution, of a holding company in
2 connection with any acquisition under this sub-
3 section.

4 “(B) INTERMEDIATE HOLDING COMPANY
5 PERMITTED.—This paragraph shall not be con-
6 strued as prohibiting an intermediate holding
7 company or an affiliate of an insured depository
8 institution from being a conduit for assistance
9 ultimately intended for an insured bank.

10 “(10) ANNUAL REPORT.—

11 “(A) REQUIRED.—In the appropriate
12 agency’s annual report to the Congress, the
13 agency shall include a report on the acquisitions
14 approved under this subsection during the pre-
15 ceding year.

16 “(B) CONTENTS.—The report required
17 under subparagraph (A) shall contain the fol-
18 lowing information:

19 “(i) The number of acquisitions under
20 this subsection.

21 “(ii) A brief description of each such
22 acquisition and the circumstances under
23 which such acquisition occurred.

24 “(11) DETERMINATION OF TOTAL ASSETS.—

25 For purposes of this subsection, the total assets of

1 any insured bank shall be determined on the basis
2 of the most recent report of condition of such bank
3 which is available at the time of such determination.

4 “(12) ACQUISITION OF MINORITY BANK BY MI-
5 NORITY BANK HOLDING COMPANY WITHOUT REGARD
6 TO ASSET SIZE.—

7 “(A) IN GENERAL.—For the purpose of
8 ensuring continued minority control of a minor-
9 ity-controlled bank, paragraphs (2) and (3)
10 shall apply with respect to the acquisition of a
11 minority-controlled bank by an out-of-State mi-
12 nority-controlled depository institution or depos-
13 itory institution holding company without re-
14 gard to the fact that the total assets of such
15 minority-controlled bank is less than
16 \$500,000,000.

17 “(B) DEFINITIONS.—For purposes of this
18 paragraph—

19 “(i) MINORITY BANK.—The term ‘mi-
20 nority bank’ means any depository institu-
21 tion described in clause (i), (ii), or (iii) of
22 section 19(b)(1)(A) of the Federal Reserve
23 Act—

24 “(I) more than 50 percent of the
25 ownership or control of which is held

1 by one or more minority individuals;
2 and

3 “(II) more than 50 percent of
4 the net profit or loss of which accrues
5 to minority individuals.

6 “(ii) MINORITY.—The term ‘minority’
7 means any Black American, Native Amer-
8 ican, Hispanic American, or Asian Amer-
9 ican.”.

10 (3) INSURED BRANCHES OF FOREIGN BANKS.—

11 Section 13(h) of the Federal Deposit Insurance Act
12 (12 U.S.C. 1823(h)) is amended to read as follows:

13 “(h) APPLICABILITY TO INSURED BRANCHES OF
14 FOREIGN BANKS.—The powers conferred on the appro-
15 priate agencies and the heads of such agencies (as such
16 terms are defined in subsection (c)(3)) by this section to
17 take action to reopen an insured depository institution in
18 default or to avert the default of an insured depository
19 institution may be used with respect to an insured branch
20 of a foreign bank if, in the judgment of the head of the
21 appropriate agency, the public interest in avoiding the
22 closing of such branch substantially outweighs any addi-
23 tional risk of loss to the Bank Insurance Fund which the
24 exercise of such powers would entail.”.

1 (4) EMERGENCY SAVINGS ASSOCIATION ACQUI-
2 SITION AUTHORITY OF THE AGENCY AND THE
3 FDIC.—Section 13(k) of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1923(k)) is amended to read as
5 follows:

6 “(k) EMERGENCY ACQUISITIONS.—

7 “(1) IN GENERAL.—

8 “(A) ACQUISITIONS AUTHORIZED.—

9 “(i) TRANSACTIONS DESCRIBED.—

10 Notwithstanding any provision of State
11 law, upon determining that severe financial
12 conditions threaten the stability of a sig-
13 nificant number of savings associations, or
14 of savings associations possessing signifi-
15 cant financial resources, the appropriate
16 agency (as defined in subsection (c)(3)), in
17 the discretion of the head of the agency
18 and upon a determination by the head of
19 the agency that a transaction under this
20 subsection would lessen the risk to the
21 agency or a deposit insurance fund, may
22 authorize—

23 “(I) a savings association that is
24 eligible for assistance pursuant to
25 subsection (c) to merge or consolidate

1 with, or to transfer the association's
2 assets and liabilities to, any other sav-
3 ings association or any insured bank,

4 “(II) any other savings associa-
5 tion to acquire control of such savings
6 association, or

7 “(III) any company to acquire
8 control of such savings association or
9 to acquire the assets or assume the li-
10 abilities of the association.

11 “(ii) SAFETY AND SOUNDNESS RE-
12 QUIREMENT.—The appropriate agency may
13 not authorize any transaction under this
14 subsection unless the agency determines
15 that the authorization will not present a
16 substantial risk to the safety or soundness
17 of the savings association to be acquired or
18 any acquiring entity.

19 “(iii) TERMS OF TRANSACTIONS.—
20 Mergers, consolidations, transfers, and ac-
21 quisitions under this subsection shall be on
22 such terms as the appropriate agency shall
23 provide.

24 “(iv) APPROVAL BY APPROPRIATE
25 AGENCY.—Where otherwise required by

1 law, transactions under this subsection
2 shall be approved by the appropriate Fed-
3 eral banking agency of every party to the
4 transaction.

5 “(v) ACQUISITIONS BY SAVINGS ASSO-
6 CIATIONS.—Any Federal savings associa-
7 tion which acquires another savings asso-
8 ciation pursuant to clause (i) may, with
9 the concurrence of the Director of the Of-
10 fice of Thrift Supervision, hold that sav-
11 ings association as a subsidiary notwith-
12 standing the percentage limitations of sec-
13 tion 5(c)(4)(B) of the Home Owners’ Loan
14 Act.

15 “(vi) DUAL SERVICE.—Dual service
16 by a management official that would other-
17 wise be prohibited under the Depository
18 Institution Management Interlocks Act
19 may, with the approval of the appropriate
20 agency, continue for up to 10 years.

21 “(vii) CONTINUED APPLICABILITY OF
22 CERTAIN STATE RESTRICTIONS.—No provi-
23 sion of this subsection shall be construed
24 as superseding any State law which re-

1 stricts or limits the activities of a savings
2 association on behalf of another entity.

3 “(B) CONSULTATION WITH STATE OFFI-
4 CIAL.—

5 “(i) CONSULTATION REQUIRED.—Be-
6 fore making a determination to take any
7 action under subparagraph (A), the appro-
8 priate agency shall consult the State bank
9 supervisor of the acquired institution.

10 “(ii) OPPORTUNITY FOR OBJEC-
11 TION.—The State bank supervisor shall be
12 given a reasonable opportunity, and in no
13 event less than 48 hours, to object to the
14 approval by the appropriate agency of a
15 transaction under this paragraph.

16 “(iii) NOTICE BEFORE APPOINT-
17 MENT.—Notice under clause (ii) may be
18 provided by the Administrator with respect
19 to a savings association before a receiver is
20 appointed for the association, if the Ad-
21 ministrator determines an appointment of
22 a receiver is pending.

23 “(iv) WRITTEN NOTICE OF DETER-
24 MINATION.—If the State bank supervisor
25 objects to a transaction under this para-

1 graph during the period available for such
2 objection in accordance with clause (ii), the
3 appropriate agency shall provide to the
4 State bank supervisor a written certifi-
5 cation of the agency's determination with
6 respect to such objection as soon as prac-
7 ticable after the determination is made.

8 “(2) SOLICITATION OF OFFERS.—

9 “(A) IN GENERAL.—In considering author-
10 izations under this subsection, the appropriate
11 agency may solicit such offers or proposals as
12 are practicable from any prospective purchasers
13 or merger partners the agency determines, in
14 the head of the agency's sole discretion, are
15 both qualified and capable of acquiring the as-
16 sets and liabilities of the savings association.

17 “(B) MINORITY-CONTROLLED DEPOSITORY
18 INSTITUTIONS.—In the case of a minority-con-
19 trolled depository institution, the appropriate
20 agency shall seek an offer from other minority-
21 controlled depository institutions before seeking
22 an offer from other persons.

23 “(3) TECHNICAL AUTHORITY.—

24 “(A) DETERMINATIONS ARE DETERMINA-
25 TIVE.—In determining the cost of offers under

1 this subsection, the appropriate agency's cal-
2 culations and estimations shall be determina-
3 tive.

4 “(B) TIME LIMITS.—The appropriate
5 agency may set reasonable time limits on offers.

6 “(4) BRANCHING PROVISIONS.—

7 “(A) MAINTENANCE OF EXISTING
8 BRANCHES.—If a merger, consolidation, trans-
9 fer, or acquisition under this subsection involves
10 a savings association eligible for assistance and
11 a bank or bank holding company, a savings as-
12 sociation may retain and operate any existing
13 branch or branches or any other existing facili-
14 ties.

15 “(B) NEW BRANCHES.—If the savings as-
16 sociation continues to exist as a separate entity,
17 the association may establish and operate new
18 branches to the same extent as any savings as-
19 sociation that is not affiliated with a bank hold-
20 ing company the home office of which is located
21 in the same State.

22 “(C) RESTRICTIONS.—

23 “(i) IN GENERAL.—Notwithstanding
24 subparagraph (A), if—

1 “(I) the home office of a savings
2 association described in such subpara-
3 graph is not in the same State in
4 which the home office of a bank sub-
5 sidiary of the bank holding company
6 is located; and

7 “(II) such association does not
8 qualify as a domestic building and
9 loan association under section
10 7701(a)(19) of the Internal Revenue
11 Code of 1986, or does not meet the
12 asset composition test imposed by
13 subparagraph (C) of that section on
14 institutions seeking so to qualify,
15 such savings association shall be subject to
16 the conditions upon which a bank may re-
17 tain, operate, and establish branches in the
18 State in which the savings association is
19 located.

20 “(ii) TRANSITION PERIOD.—The ap-
21 propriate agency, for good cause shown,
22 may allow a savings association up to 2
23 years to comply with the requirements of
24 clause (i).

1 “(5) ASSISTANCE BEFORE APPOINTMENT OF
2 CONSERVATOR OR RECEIVER.—

3 “(A) ASSISTANCE PROPOSALS.—The Cor-
4 poration shall consider proposals by Savings As-
5 sociation Insurance Fund members for assist-
6 ance pursuant to subsection (c) before grounds
7 exist for appointment of a conservator or re-
8 ceiver for such member under the following cir-
9 cumstances:

10 “(i) TROUBLED CONDITION CRI-
11 TERIA.—The Corporation determines—

12 “(I) that grounds for appoint-
13 ment of a conservator or receiver exist
14 or likely will exist in the future unless
15 the member’s tangible capital is in-
16 creased;

17 “(II) that it is unlikely that the
18 member can achieve positive tangible
19 capital without assistance; and

20 “(III) that providing assistance
21 pursuant to the member’s proposal
22 would be likely to lessen the risk to
23 the Corporation.

24 “(ii) OTHER CRITERIA.—The member
25 meets the following criteria:

1 “(I) Before enactment of the Fi-
2 nancial Institutions Reform, Recovery,
3 and Enforcement Act of 1989, the
4 member was solvent under applicable
5 regulatory accounting principles but
6 had negative tangible capital.

7 “(II) The member’s negative tan-
8 gible capital position is substantially
9 attributable to its participation in ac-
10 quisition and merger transactions that
11 were instituted by the Federal Home
12 Loan Bank Board or the Federal Sav-
13 ings and Loan Insurance Corporation
14 for supervisory reasons.

15 “(III) The member is a qualified
16 thrift lender (as defined in section
17 10(m) of the Home Owners’ Loan
18 Act) or would be a qualified thrift
19 lender if commercial real estate owned
20 and nonperforming commercial loans
21 acquired in acquisition and merger
22 transactions that were instituted by
23 the Federal Home Loan Bank Board
24 or the Federal Savings and Loan In-
25 surance Corporation for supervisory

1 reasons were excluded from the mem-
2 ber's total assets.

3 “(IV) The appropriate Federal
4 banking agency has determined that
5 the member's management is com-
6 petent and has complied with applica-
7 ble laws, rules, and supervisory direc-
8 tives and orders.

9 “(V) The member's management
10 did not engage in insider dealing or
11 speculative practices or other activities
12 that jeopardized the member's safety
13 and soundness or contributed to its
14 impaired capital position.

15 “(VI) The member's offices are
16 located in an economically depressed
17 region.

18 “(B) CORPORATION CONSIDERATION OF
19 ASSISTANCE PROPOSAL.—If a member meets
20 the requirements of clauses (i) and (ii) of sub-
21 paragraph (A), the Corporation shall consider
22 providing direct financial assistance.

23 “(C) ECONOMICALLY DEPRESSED REGION
24 DEFINED.—For purposes of this paragraph, the
25 term ‘economically depressed region’ means any

geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.”.

(5) TECHNICAL AND CONFORMING AMENDMENT.—Subsection 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) is amended by striking subsections (d), (e), and (g).

(d) REPEAL OF FDIC RECEIVERSHIP AND CONSERVATORSHIP AUTHORITY.—

(1) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(A) by striking subsections (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r), and (s) of section 11; and

(B) by striking section 12.

(2) LIMITED FDIC AUTHORITY TO ESTABLISH BRIDGE BANKS.—Section 11(n)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(n)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking “1 or more insured banks are in default, or when”; and

1 (ii) by striking the comma after “may
2 become in default”; and

3 (B) in subparagraph (B), by striking “in
4 default or in danger of default” each place such
5 term appears and inserting “in danger of de-
6 fault”.

7 (e) TRANSFER OF FUNCTIONS.—Except to the extent
8 otherwise provided by this Act or any amendment made
9 by this Act, all functions performed by the Federal De-
10 posit Insurance Corporation as a conservator or receiver
11 of an insured depository institution, as of the day before
12 the effective date of this Act, are hereby transferred to
13 the Administrator of the Resolution, Asset Management,
14 and Liquidation Agency.

15 (f) ACCESS TO REPORTS OF CONDITION AND EXAM-
16 INATION REPORTS.—

17 (1) REPORTS OF CONDITION.—Section 7(a)(2)
18 of the Federal Deposit Insurance Act (12 U.S.C.
19 1817(a)(2)) is amended—

20 (A) in the 1st sentence—

21 (i) by inserting “and, in the case of a
22 depository institution for which the Admin-
23 istrator of the Resolution, Asset Manage-
24 ment, and Liquidation Agency has been
25 appointed as conservator or receiver, the

1 Administrator” after “The Corporation”;
 2 and

3 (ii) by inserting “or Administrator”
 4 after “the Corporation”; and
 5 (B) in the 2d sentence—

6 (i) by inserting “and the Adminis-
 7 trator” after “The Corporation”; and

8 (ii) by inserting “or the Adminis-
 9 trator” after “made to, the Corporation”.

10 (2) TECHNICAL AND CONFORMING AMENDMENT
 11 RELATING TO INFORMATION SHARING.—Section
 12 11(t)(2)(A) of the Federal Deposit Insurance Act
 13 (12 U.S.C. 1821(t)(2)(A)) is amended by striking
 14 clause (ii) and inserting the following new clause:

15 “(ii) The Resolution, Asset Manage-
 16 ment, and Liquidation Agency.”.

17 **SEC. 103. ABOLITION OF RESOLUTION TRUST CORPORA-**
 18 **TION.**

19 (a) IN GENERAL.—The Thrift Depositor Protection
 20 Oversight Board and the Resolution Trust Corporation
 21 are hereby abolished.

22 (b) TRANSFER OF FUNCTIONS.—Except to the extent
 23 otherwise provided by this Act or any amendment made
 24 by this Act, all functions performed by the Resolution
 25 Trust Corporation, including any appointment as a con-

1 servator or receiver, as of the day before the effective date
2 of this Act are hereby transferred to the Administrator
3 of the Resolution, Asset Management, and Liquidation
4 Agency.

5 (c) TRANSFER OF ASSETS AND LIABILITIES.—All as-
6 sets and liabilities, including any real or personal property,
7 of the Thrift Depositor Protection Oversight Board and
8 the Resolution Trust Corporation shall be transferred to
9 the Administrator of the Resolution, Asset Management,
10 and Liquidation Agency.

11 (d) AVAILABILITY OF RTC FUNDS.—Amounts ap-
12 propriated under section 21A of the Federal Home Loan
13 Bank Act which remain available for expenditure by the
14 Resolution Trust Corporation on the day before the date
15 of the enactment of this Act shall become available to the
16 Federal Deposit Insurance Corporation as of such date for
17 deposit in the Savings Association Insurance Fund.

18 (e) SAVINGS PROVISION.—

19 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
20 TIONS NOT AFFECTED.—Subsections (a) and (b)
21 shall not affect the validity of any right, duty, or ob-
22 ligation of the United States, the Thrift Depositor
23 Protection Oversight Board, the Resolution Trust
24 Corporation, or any other person, which—

1 (A) arises under or pursuant to the Fed-
2 eral Home Loan Bank Act, the Federal Deposit
3 Insurance Act, or any other Federal law; and

4 (B) existed on the day before the date of
5 the enactment of this Act.

6 (2) CONTINUATION OF SUITS.—No action or
7 other proceeding commenced by or against the
8 Thrift Depositor Protection Oversight Board or the
9 Resolution Trust Corporation, in any capacity, shall
10 abate by reason of the enactment of this Act, except
11 that the Administrator of the Resolution, Asset
12 Management, and Liquidation Agency shall be sub-
13 stituted for the Chairperson of the Thrift Depositor
14 Protection Oversight Board, the Thrift Depositor
15 Protection Oversight Board, the Resolution Trust
16 Corporation, or the chief executive officer of the
17 Resolution Trust Corporation, as the case may be,
18 as a party to any such action or proceeding.

19 (f) CONTINUATION OF ORDERS, RESOLUTIONS, DE-
20 TERMINATIONS, AND REGULATIONS.—All orders, resolu-
21 tions, determinations, and regulations, which—

22 (1) have been issued, made, prescribed, or al-
23 lowed to become effective by the Thrift Depositor
24 Protection Oversight Board or the Resolution Trust
25 Corporation or by a court of competent jurisdiction,

1 in the performance of functions which are trans-
2 ferred by this Act; and

3 (2) are in effect on the date this Act takes ef-
4 fect (or become effective after such date pursuant to
5 the terms of the order, resolution, determination or
6 regulation, as in effect on such date),

7 shall continue in effect according to the terms of such or-
8 ders, resolutions, determinations, and regulations and
9 shall be enforceable by or against the Administrator of the
10 Resolution, Asset Management, and Liquidation Agency
11 until modified, terminated, set aside, or superseded in ac-
12 cordance with applicable law by the Administrator, by any
13 court of competent jurisdiction, or by operation of law.

14 **SEC. 104. EMPLOYEE TRANSFERS.**

15 (a) ALL RTC-ASSIGNED EMPLOYEES TO BE TRANS-
16 FERRED.—All Federal Deposit Insurance Corporation em-
17 ployees assigned to the Resolution Trust Corporation on
18 the day before the effective date of this Act, including liq-
19 uidation-grade, general-grade, and general-grade term em-
20 ployees, shall be transferred to the Administrator of the
21 Resolution, Asset Management, and Liquidation Agency
22 (hereafter in this subsection referred to as the “Adminis-
23 trator”) 60 days after the establishment of the Agency.

24 (b) FDIC-ASSIGNED EMPLOYEES TO BE TRANS-
25 FERRED.—

1 (1) IN GENERAL.—All Federal Deposit Insur-
2 ance Corporation employees assigned to the Federal
3 Deposit Insurance Corporation on the day before en-
4 actment of this Act, including liquidation-grade, gen-
5 eral-grade, and general-grade term employees, who
6 are performing liquidation, resolution or other func-
7 tions transferred pursuant to this Act, shall be
8 transferred to the Administrator 60 days after es-
9 tablishment of the Agency.

10 (2) JOINT IDENTIFICATION.—The Federal De-
11 posit Insurance Corporation and the Administrator
12 shall jointly identify which Federal Deposit Insur-
13 ance Corporation-assigned employees are performing
14 liquidation, resolution, or other transferred func-
15 tions.

16 (c) TDPOB EMPLOYEES TO BE TRANSFERRED.—
17 All employees of the Thrift Depositor Protection Oversight
18 Board on the day before enactment of this Act shall be
19 transferred to the Administrator 60 days after the estab-
20 lishment of the Agency.

21 (d) RIGHTS OF TRANSFERRED EMPLOYEES.—

22 (1) IN GENERAL.—Except as otherwise pro-
23 vided in this section, each employee transferred pur-
24 suant to this section shall be transferred to a sub-
25 stantially similar position in an office within the

1 same local commuting area, and shall be guaranteed
2 a position with the same status, tenure (except gen-
3 eral-grade term employees who shall be transferred
4 without limitation as to term), pay (including any
5 regional or cost-of-living differential), and grade as
6 that held on the day immediately preceding the en-
7 actment of this Act. Each transferred employee shall
8 receive notice of his position assignment not later
9 than 60 days after transfer into the Administrator.

10 (2) LG EMPLOYEES.—Liquidation-grade em-
11 ployees assigned to either the Federal Deposit Insur-
12 ance Corporation or the Resolution Trust Corpora-
13 tion shall be transferred to an office within the same
14 local commuting area, and shall be guaranteed a po-
15 sition with the same pay (including any regional or
16 cost-of-living differential), and grade as that held on
17 the day immediately preceding the enactment of this
18 Act, and shall be separated in accordance with the
19 terms of the appointment, unless the appointment is
20 renewed by the Administrator.

21 (3) TDPOB EMPLOYEES.—Employees of the
22 Thrift Depositor Protection Oversight Board shall
23 be transferred to a similar position in an office with-
24 in the same local commuting area, and shall be
25 guaranteed a position with the same tenure, pay (in-

1 cluding any regional or cost-of-living differential),
2 and grade as that held on the day immediately pre-
3 ceding the enactment of this Act. Employees who
4 are in the excepted service whose counterparts from
5 the Federal Deposit Insurance Corporation are in
6 the competitive service shall have their status con-
7 verted to competitive without any further action.

8 (4) ADDITIONAL EMPLOYEE PROTECTIONS.—
9 Each employee transferred pursuant to this section,
10 other than a liquidation-grade employee, shall not be
11 involuntarily separated or reduced in grade or com-
12 pensation for 1 year after the date of the transfer,
13 except for cause. A transfer pursuant to this Act
14 shall be deemed a “transfer of function” for the pur-
15 poses of section 3503 of title 5, United States Code,
16 and a “major transfer of function” for purposes of
17 affording affected employees retirement under sec-
18 tion 8336(d)(2) or 8414(b)(1)(B) of title 5, United
19 States Code.

20 (e) PERSONNEL AUTHORITY OF THE ADMINIS-
21 TRATOR.—Before the transfer of employees pursuant to
22 this section, the Administrator—

23 (1) may use employees assigned to the Resolu-
24 tion Trust Corporation or the Federal Deposit In-
25 surance Corporation on a temporary basis; and

1 (2) shall reimburse the appropriate corporation
2 for the agency's actual expenses.

3 (f) TRANSFER UPON FAILURE TO REAUTHORIZE.—

4 (1) IN GENERAL.—Upon the expiration of the
5 period during which the Administrator may be ap-
6 pointed as receiver, detailed employees of other Ex-
7 ecutive agencies (as defined in section 105 of title 5,
8 United States Code) shall be returned to the detail-
9 ing agency and all other employees shall be identi-
10 fied for transfer to the closest office of the Federal
11 Deposit Insurance Corporation in accordance with
12 the provisions of paragraphs (1), (2), and (4) of sec-
13 tion 404 of the Financial Institutions Reform, Re-
14 covery, and Enforcement Act of 1989.

15 (2) APPLICABILITY OF SECTION 404.—Para-
16 graphs (1), (2), and (4) of section 404 of the Finan-
17 cial Institutions Reform, Recovery, and Enforcement
18 Act of 1989 shall apply with respect to each em-
19 ployee identified for transfer under paragraph (1)
20 (of this subsection) in the same manner such para-
21 graphs applied with respect to employees identified
22 for transfer under section 403(b) of such Act.

1 **SEC. 105. TRANSFER OF FSLIC RESOLUTION FUND TO**
2 **AGENCY.**

3 (a) IN GENERAL.—Section 11A(a) of the Federal De-
4 posit Insurance Act (12 U.S.C. 1821a(a)) is amended—

5 (1) in paragraph (1), by striking “Corporation”
6 and inserting “Administrator of the Resolution,
7 Asset Management, and Liquidation Agency (here-
8 after in this section referred to as the ‘Adminis-
9 trator’)”;

10 (2) by striking paragraph (3) and inserting the
11 following new paragraph:

12 “(3) SEPARATE HOLDING.—Assets and liabil-
13 ities transferred to the FSLIC Resolution Fund
14 shall be assets and liabilities of the Fund and not
15 the Administrator and shall not be consolidated with
16 the assets and liabilities of the Administrator.”;

17 (3) by striking paragraph (4) and inserting the
18 following new paragraph:

19 “(4) RIGHTS, POWERS, AND DUTIES.—Effective
20 on the date of the enactment of the Revitalization of
21 Depository Institution Liquidation Procedures Act of
22 1993, the Administrator shall have all rights, pow-
23 ers, and duties to carry out the Administrator’s du-
24 ties with respect to the assets and liabilities of the
25 FSLIC Resolution Fund that the Administrator oth-
26 erwise has under this Act and sections 21A, 21C,

1 and 21D of the Federal Home Loan Bank Act.”;
2 and

3 (4) by striking paragraph (5) and inserting the
4 following new paragraph:

5 “(5) ADMINISTRATOR AS CONSERVATOR OR RE-
6 CEIVER.—

7 “(A) IN GENERAL.—Effective on the date
8 of the enactment of the Revitalization of Depos-
9 itory Institution Liquidation Procedures Act of
10 1993, the Administrator shall succeed the Cor-
11 poration as conservator or receiver with respect
12 to any depository institution—

13 “(i) the accounts of which were in-
14 sured before August 10, 1989 by the Fed-
15 eral Savings and Loan Insurance Corpora-
16 tion; and

17 “(ii) for which a conservator or re-
18 ceiver was appointed before January 1,
19 1989.

20 “(B) RIGHTS, POWERS, AND DUTIES.—
21 When acting as conservator or receiver with re-
22 spect to any depository institution described in
23 subparagraph (A), the Administrator shall have
24 all rights, powers, and duties that the Adminis-
25 trator otherwise has as conservator or receiver

1 under this Act and sections 21A, 21C, and 21D
2 of the Federal Home Loan Bank Act.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
4 Section 11A of the Federal Deposit Insurance Act (12
5 U.S.C. 1821a) is amended—

6 (1) in subsection (b), by striking (4); and

7 (2) in subsection (c)(1), by striking “Corpora-
8 tion” and inserting “Administrator”.

9 **TITLE II—FUNDING ISSUES**

10 **SEC. 201. MAXIMUM OBLIGATION LIMITATION OF ADMINIS-** 11 **TRATOR.**

12 Section 21A(j)(1) of the Federal Home Loan Bank
13 Act (12 U.S.C. 1441a(j)(1)(B)) is amended by striking
14 “\$50,000,000,000” and inserting “\$31,200,000,000”.

15 **SEC. 202. BORROWING BY ADMINISTRATOR LIMITED TO** 16 **FEDERAL FINANCING BANK.**

17 Section 21A(i)(1) of the Federal Home Loan Bank
18 Act (12 U.S.C. 1441a(i)(1)) is amended by adding the fol-
19 lowing new subparagraph:

20 “(C) ADDITIONAL BORROWING.—The Ad-
21 ministrator may borrow only from the Treasury
22 of the United States or from the Federal Fi-
23 nancing Bank.”.

TITLE III—REPORTS

SEC. 301. STUDY OF PRIVATE SECTOR CONTRACTORS.

Section 21A(p) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(p)) is amended by adding at the end the following new paragraph:

“(3) STUDY OF PRIVATE SECTOR CONTRACTORS.—The Administrator shall conduct a detailed review of contractor performance of its major activities, such as asset valuation, cost test calculation, property management, etc., for the purpose of preparing a report to the Senate Banking, Housing, and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee on the benefits and burdens of contracting out tasks to private sector firms as compared to the benefits and burdens of performing the work with its employees.”.

SEC. 302. ADDITIONAL REPORTS.

Section 21A(k)(7) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(k)(7)) is amended to read as follows:

“(7) QUARTERLY REPORTS.—

“(A) REPORTS REQUIRED.—Not later than May 31, August 31, November 30, and the last day of February of each year, the Adminis-

1 trator shall submit reports to the Committee on
2 Banking, Finance and Urban Affairs of the
3 House of Representatives and the Committee
4 on Banking, Housing, and Urban Affairs of the
5 Senate.

6 “(B) ASSETS ON HAND.—

7 “(i) IN GENERAL.—Each report under
8 this paragraph shall include a report on
9 the assets on hand at the beginning and
10 end of the reporting quarter in receiver-
11 ships or conservatorships or in institutions
12 under supervisory control of the Adminis-
13 trator.

14 “(ii) INFORMATION REQUIRED TO BE
15 INCLUDED.—For each asset, the following
16 information shall be reported:

17 “(I) Category of asset.

18 “(II) Location of asset.

19 “(III) Book value of asset.

20 “(IV) Fair market value of asset
21 as identified either for purposes of
22 borrowing from the Federal Financing
23 Bank or for purposes of calculating
24 the least-cost resolution method.

1 “(V) Information on whether
2 data reported is estimated or con-
3 firmed from books and records or
4 other reliable sources.

5 “(VI) Any ancillary matter that
6 may affect the sale of the asset, such
7 as hazardous waste, environmental or
8 historic significance of the asset, in-
9 complete records, title problems, tax
10 or materialmens’ liens, or adverse eco-
11 nomic conditions existing in the local
12 area in which the asset is located.

13 “(C) ASSET SALES.—

14 “(i) IN GENERAL.—Each report under
15 this paragraph shall include a report on
16 asset sales during the reporting quarter,
17 including the information enumerated in
18 subparagraph (A).

19 “(ii) INFORMATION REQUIRED TO BE
20 INCLUDED.—For each asset sale, the fol-
21 lowing information shall be reported:

22 “(I) The sale price of the asset.

23 “(II) The terms of any financing.

24 “(III) Any terms of a sale which
25 obligate the Administrator to future

1 liability with regard to the asset (in-
2 cluding such matters as ‘puts’, seller
3 financing, and guaranteed yields).

4 “(IV) The period of time during
5 which the asset was under the control
6 of the Administrator.

7 “(V) Any expenditure made in
8 connection with the preservation or
9 the sale of the asset (including fees
10 paid to interim servicers, asset man-
11 agement and disposition contractors,
12 real estate brokers, securities brokers
13 or underwriters, auctioneers, and in-
14 surance and professional fees).

15 “(VI) The calculation of net pro-
16 ceeds to the Administrator or the sav-
17 ings association, and the net proceeds
18 as adjusted for contingencies and al-
19 lowances.

20 “(VII) The calculation of the net
21 loss (or gain) on each asset, using the
22 value of the asset on the books of a
23 depository institution as of the date of
24 the declaration of conservatorship or

1 receivership or the imposition of regu-
2 latory supervision as the basis.

3 “(VIII) Information on whether
4 the sale was made by auction or a
5 bulk sale, under the affordable hous-
6 ing program, or through a
7 securitization process.

8 “(D) FORMATS FOR SUBPARAGRAPHS (B)
9 AND (C).—The information specified in subpara-
10 graphs (B) and (C) shall be reported in the fol-
11 lowing formats (and any other that the Admin-
12 istrator, in the Administrator’s discretion,
13 deems useful):

14 “(i) By categories of asset and loca-
15 tion.

16 “(ii) By categories of asset, location,
17 type of sale, and continuing or contingent
18 liabilities of the Administrator.

19 “(iii) By categories of asset, location,
20 and type of financing.

21 “(iv) By categories of asset, holding
22 period, and location.

23 “(v) By categories of asset, location,
24 and value of other assets of a similar type

1 in the local market still held or under the
2 control of the Administrator.

3 “(E) DESCRIPTIVE INFORMATION.—The
4 reports shall contain summary tables, subtotals,
5 and such descriptive information as may be
6 needed to assure the presentation of complete
7 and accurate data.

8 “(F) DEFINITIONS.—For purposes of this
9 paragraph—

10 “(i) CATEGORY OF ASSETS.—The
11 term ‘category of assets’ means the follow-
12 ing:

13 “(I) Cash.

14 “(II) Securities.

15 “(III) Loans.

16 “(IV) Real estate.

17 “(V) Other.

18 “(ii) DIRECTOR.—The term ‘Director’
19 means the Director of the Office of Thrift
20 Supervision.

21 “(iii) LOAN.—The term ‘loan’
22 means—

23 “(I) residential mortgages se-
24 cured by 1- to 4-family dwellings;

25 “(II) construction loans;

1 “(III) land loans;

2 “(IV) land development loans;

3 “(V) other mortgage loans;

4 “(VI) consumer loans; and

5 “(VII) commercial loans.

6 “(iv) REAL ESTATE.—The term ‘real
7 estate’ means—

8 “(I) commercial real estate;

9 “(II) residential real estate;

10 “(III) residential single-family
11 real estate;

12 “(IV) residential multifamily real
13 estate; and

14 “(V) undeveloped or raw land.

15 “(v) COMMERCIAL REAL ESTATE.—

16 The term ‘commercial real estate’ means—

17 “(I) office buildings, subdivided
18 into categories by net rentable or sale-
19 able square feet;

20 “(II) shopping centers, sub-
21 divided by size;

22 “(III) golf courses, race tracks,
23 sports complexes and stadiums, and
24 other types of recreational facilities;
25 and

1 “(IV) hotels and motels sub-
2 divided by size.

3 “(vi) LOCATION.—The term ‘location’
4 means—

5 “(I) street address, lot and block,
6 or other designation sufficient to pre-
7 cisely locate the asset;

8 “(II) city and State;

9 “(III) Standard Metropolitan
10 Statistical Area, or if the asset is not
11 located within such an area, then the
12 county; and

13 “(IV) jurisdiction of regional,
14 consolidated, and field office of the
15 Administrator.

16 “(vii) TYPE OF SALE.—The term
17 ‘type of sale’ includes—

18 “(I) bulk sales;

19 “(II) the issuance and sale of se-
20 curities backed by a pool of assets
21 held by the Administrator;

22 “(III) auction sales;

23 “(IV) sales under the affordable
24 housing program; and

25 “(V) seller-financed sales.

1 “(viii) the term ‘law firm’—

2 “(I) means any person who pro-
3 vides legal services for hire; and

4 “(II) includes all partners, asso-
5 ciates, employees, branch offices, and
6 affiliates of such a person.

7 “(G) DATA ON PRIVATE SECTOR CONTRAC-
8 TORS.—

9 “(i) IN GENERAL.—For each contract
10 outstanding at the end of the reporting
11 quarter, the Administrator shall report the
12 following:

13 “(I) The type of contract.

14 “(II) The name and principal ad-
15 dress of the contractor.

16 “(III) The total dollar value of
17 the contract.

18 “(IV) The amount of fees or con-
19 sideration paid to the contractor dur-
20 ing the quarter and since the incep-
21 tion of the contract.

22 “(V) Information on whether a
23 waiver of the conflict of interest rules
24 were granted in connection with the
25 award of the contract and the names

1 and addresses of persons who were
2 granted any such waivers.

3 “(VI) A brief description of any
4 ongoing problems with the contract or
5 with the assets or services that are
6 the subject of the contract.

7 “(VII) The total value of assets
8 delivered to the contractor, sold by the
9 contractor pursuant to the contract,
10 the total receipts received from the
11 contractor, total fees and charges paid
12 to the contractor, the terms of any
13 asset sales, and the value and location
14 of any assets returned to the Adminis-
15 trator pursuant to an asset sale, if ap-
16 plicable.

17 “(ii) SUBCONTRACTOR INFORMA-
18 TION.—The information required under
19 clause (i) shall be reported for each sub-
20 contractor of a contractor who performs a
21 substantial part of the value of the con-
22 tractor’s agreement with the Adminis-
23 trator.

24 “(iii) TYPES OF CONTRACTS SPECIFI-
25 CALLY INCLUDED.—For purposes of this

1 subparagraph, the term ‘type of contract’
2 includes the following:

3 “(I) Asset management and dis-
4 position contracts.

5 “(II) Interim servicing agree-
6 ments.

7 “(III) Collection agreements.

8 “(IV) Brokerage or underwriting
9 contracts.

10 “(V) Property management con-
11 tracts.

12 “(VI) Professional services con-
13 tracts.

14 “(VII) Financial services con-
15 tracts.

16 “(H) STATUS OF CLAIMS AND SUITS.—

17 With respect to each claim pending at the end
18 of the quarter against any depository institution
19 for which the Administrator has been appointed
20 conservator or receiver, the Administrator, any
21 managing agent of the Administrator, any en-
22 tity which has contracted to provide services to
23 the Administrator on account of a failed deposi-
24 tory institution and each claim pending at such
25 time on behalf of the insured depository institu-

1 tion, the Administrator shall provide the follow-
2 ing information, together with any additional
3 information which may be necessary in the dis-
4 cretion of the Administrator to provide a true
5 and accurate evaluation of the claim:

6 “(i) The name of the claimant.

7 “(ii) The amount of any monetary
8 claim and a description of other relief re-
9 quested.

10 “(iii) The court or tribunal in which
11 the claim is pending, if any.

12 “(iv) The law firm retained by the
13 Administrator (if any), the firm’s assess-
14 ment of the validity of the claim, and the
15 number of other claims or suits being han-
16 dled by the firm on behalf of the Adminis-
17 trator or any other depository institution
18 for which the Administrator has been ap-
19 pointed conservator or receiver.

20 “(v) With respect to any law firm re-
21 ferred to in clause (iv), whether a waiver
22 of the conflict of interest rules has been
23 made in connection with the provision of
24 services by the firm.

1 “(vi) The aggregate of fees paid to
2 any law firm during the quarter in connec-
3 tion with the claim.

4 “(vii) The expected date of resolution
5 of the claim.

6 “(viii) The condition of any collateral
7 involved with respect to the claim.

8 “(ix) The nature of any counterclaims
9 or defenses.

10 “(x) The attorney or supervisor em-
11 ployed by the Administrator who is respon-
12 sible for monitoring the claims process on
13 behalf of the Administrator.

14 “(I) CURRENCY AND ANALYSIS OF INFOR-
15 MATION.—

16 “(i) IN GENERAL.—The Administrator
17 shall, within 6 months of the date of the
18 enactment of the Revitalization of Deposi-
19 tory Institution Liquidation Procedures
20 Act of 1993, provide the information re-
21 quired in reports under this paragraph, on
22 a real time basis with the capability of
23 sorting, comparing, and summarizing
24 across categories, locations, relationships
25 and association, and status, so that the

1 progress of the resolution effort can be
2 meaningfully judged.

3 “(ii) CERTIFICATION.—The Adminis-
4 trator shall certify each printed report as
5 being true and accurate to the best ability
6 of the Administrator, and all estimates or
7 questionable data shall be prominently
8 marked.

9 “(J) FEDERAL FINANCING BANK LOAN
10 STATUS.—The report shall contain the following
11 information with respect to loans from the Fed-
12 eral Financing Bank to the Administrator:

13 “(i) The total amount of loans out-
14 standing at the beginning of the quarter.

15 “(ii) The total amount of loans origi-
16 nated during the quarter.

17 “(iii) The total amount of loans re-
18 paid during the quarter.

19 “(iv) The total amount of loans out-
20 standing at the end of the quarter.

21 “(K) SELLER FINANCING.—The report
22 shall contain information regarding the Admin-
23 istrator’s use of seller financing to encourage
24 the sales of assets during the quarter, including
25 the following:

1 “(i) A total of the amount of funds
2 used for seller financing purposes during
3 the quarter.

4 “(ii) The number of applications re-
5 ceived by the Administrator which re-
6 quested seller financing.

7 “(iii) A breakdown of the type of as-
8 sets sold, according to the categories listed
9 in subclauses (I) through (VIII) of sub-
10 paragraph (B)(vii).

11 “(iv) Projections of the total amount
12 of seller financing which will be needed
13 during the succeeding 2 quarters.”.

14 **SEC. 303. STUDY OF STANDARDIZED RECORDS.**

15 On or before June 1, 1993, the Office of Thrift Su-
16 pervision shall report to the Senate Committee on Bank-
17 ing, Housing, and Urban Affairs and the House Commit-
18 tee on Banking, Finance and Urban Affairs, on the fea-
19 sibility of requiring a nationwide uniform automated rec-
20 ordkeeping system for insured depository institutions that
21 would assure the creation, maintenance and accuracy of
22 the books and records of savings and loan institutions in
23 a manner sufficient to assure that if regulatory action
24 must be initiated against such an insured depository insti-
25 tution, the conservator or receiver shall receive complete

1 and substantially accurate information about the assets
2 and liabilities of the institution.

3 **TITLE IV—REGULATORY** 4 **MEASURES**

5 **SEC. 401. 2 PERCENT CAPITAL CUT-OFF.**

6 (a) IN GENERAL.—Section 38(h)(3) of the Federal
7 Deposit Insurance Act (12 U.S.C. 1831o(h)(3)) is amend-
8 ed to read as follows:

9 “(3) CONSERVATORSHIP OR RECEIVERSHIP RE-
10 QUIRED.—

11 “(A) IN GENERAL.—Before the end of the
12 180-day period beginning on the date any in-
13 sured depository institution becomes critically
14 undercapitalized and notwithstanding any provi-
15 sion of State law, the appropriate Federal
16 banking agency shall appoint a receiver or, with
17 the approval of the Agency, a conservator for
18 such institution.

19 “(B) APPOINTMENT OF RECEIVER RE-
20 QUIRED IF OTHER ACTION FAILS TO RESTORE
21 CAPITAL.—In the case of any institution de-
22 scribed in subparagraph (A) for which a re-
23 ceiver was not appointed before the end of the
24 180-day period referred to in such subpara-
25 graph, the appropriate Federal banking agency

1 shall, notwithstanding any provision of State
2 law, appoint a receiver for such institution as
3 follows:

4 “(i) If the capital of such institution
5 does not exceed the critical capital level at
6 the end of the 9-month period beginning
7 on the date action is first taken by the
8 agency under subparagraph (A) with re-
9 spect to such institution, a receiver shall be
10 appointed by the end of such period.

11 “(ii) If the capital of such institution
12 exceeds the critical capital level at the end
13 of such 9-month period but fails to exceed
14 such level at the end of any of the first 3
15 months following such period, a receiver
16 shall be appointed as of the end of such
17 month.

18 “(C) ACQUISITION BY ANOTHER INSURED
19 DEPOSITORY INSTITUTION.—Notwithstanding
20 the requirement under subparagraph (A) to ap-
21 point a conservator or receiver for an insured
22 depository institution and subject to section 13,
23 the appropriate Federal banking agency may
24 require the insured depository institution to be
25 acquired (as defined in section 13(f)(8)(B)) by

1 another insured depository institution which of-
2 fers to acquire such institution if the agency de-
3 termines, with the concurrence of the Agency
4 that such acquisition would resolve the capital
5 problems of the institution in a manner that is
6 least costly to the affected deposit insurance
7 fund.”.

8 **SEC. 402. PUBLIC AVAILABILITY OF EXAMINATION INFOR-**
9 **MATION.**

10 (a) AVAILABILITY REQUIRED FOR CERTAIN INSTITU-
11 TIONS.—

12 (1) IN GENERAL.—Each appropriate banking
13 agency shall make available to the public copies of
14 reports of all examinations of each failed depository
15 institution that received funds, as defined in section
16 406, or of a holding company of such institution,
17 that was performed by that banking agency or its
18 predecessor, during the 5-year period preceding the
19 transfer, failure, or receipt of funds.

20 (2) CONSULTATION.—Each appropriate bank-
21 ing agency other than the National Credit Union
22 Administration Board shall consult with the Federal
23 Deposit Insurance Corporation or the Agency prior
24 to making such reports available to the public.

25 (b) DELAY OF PUBLICATION.—

1 (1) THREATS TO SAFETY OR SOUNDNESS OF
2 INSTITUTION.—

3 (A) IN GENERAL.—If the appropriate
4 banking agency makes a determination in writ-
5 ing that release of an examination report would
6 seriously threaten the safety or soundness of an
7 insured depository institution, such agency may
8 initially delay release of the examination report
9 for a reasonable period of time, not to exceed
10 12 months from the date of the transfer, fail-
11 ure, or receipt of funds described in section
12 406.

13 (B) EXTENSION OF DELAY.—Any deter-
14 mination under subparagraph (A) may be re-
15 newed on an annual basis.

16 (2) ONGOING INVESTIGATIONS.—If the appro-
17 priate banking agency or the Agency determines in
18 writing that release of a portion of an examination
19 report would hinder an ongoing investigation of al-
20 leged negligence, or of other activity that would give
21 rise to either administrative or civil proceedings, the
22 portion of the examination report directly pertaining
23 to the alleged negligence or other activity, may be
24 withheld from release during the investigation, until
25 the earliest of—

1 (A) the date a notice of charges is issued;

2 (B) the date a complaint is filed; or

3 (C) the end of a period not to exceed 24
4 months from the date of the transfer, failure, or
5 receipt of funds described in section 406.

6 (3) DELAY PENDING CRIMINAL INVESTIGA-
7 TION.—

8 (A) IN GENERAL.—If the appropriate
9 banking agency and the Attorney General of the
10 United States or, in the case of a State-char-
11 tered depository institution, the attorney gen-
12 eral of a State, jointly determine that release of
13 a portion of an examination report would
14 hinder an ongoing investigation of alleged
15 criminal activity, the portion of the examination
16 report directly pertaining to the alleged crime
17 may be withheld from release until the earliest
18 of—

19 (i) the termination of such investiga-
20 tion;

21 (ii) the issuance of an indictment; or

22 (iii) the end of a period not to exceed
23 5 years from the date of the transfer, fail-
24 ure or receipt of funds described in section
25 406, whichever is earlier.

1 (B) GAO ACCESS TO INFORMATION.—The
2 Attorney General of the United States or the
3 attorney general of a State shall provide the
4 Comptroller General of the United States with
5 access to information regarding any such criminal
6 investigation, and shall identify any law enforcement
7 agencies or resources assigned to the
8 investigation.

9 (c) EXCLUSION OF OPEN INSTITUTIONS.—

10 (1) OPEN INSTITUTIONS.—This section shall
11 not apply to any open insured depository institution
12 and shall not be construed to require disclosure to
13 the public of any report of examination of any open
14 insured depository institution.

15 (2) AFFILIATED SOLVENT INSTITUTIONS.—In
16 connection with the release of an examination report
17 of a holding company of a failed institution, nothing
18 in this section shall be construed as requiring the release
19 of any examination report information regarding
20 any solvent depository institution that is also a
21 subsidiary of such holding company.

22 **SEC. 403. PROHIBITION OF CONFIDENTIAL SETTLEMENTS.**

23 Notwithstanding any other provision of law or any
24 regulation or order, any agreement or settlement of claims
25 between the Agency or the Federal Deposit Insurance Cor-

1 poration and any other party which relates to an institu-
2 tion described in section 406 shall be made available to
3 the public.

4 **SEC. 404. APPLICABILITY.**

5 The requirements of section 402 shall apply—

6 (1) to any insured depository institution that
7 has had its assets or liabilities, or any part thereof,
8 transferred to the FSLIC Resolution Fund or the
9 Agency; or

10 (2) to any Bank Insurance Fund member that
11 has failed and received funds, if during either the
12 fiscal year in which the institution failed or the fis-
13 cal year in which the institution received funds, as
14 defined in section 406, the Bank Insurance Fund—

15 (A) had outstanding loans, or had other-
16 wise received funds, from the Department of
17 the Treasury, the Federal Financing Bank, or
18 any Federal Reserve bank; or

19 (B) had a negative fund balance;

20 (3) to any Savings Association Insurance Fund
21 member that has failed and received funds, if during
22 either the fiscal year in which the institution failed
23 or the fiscal year in which the institution received
24 funds, as defined in section 406, the Savings Asso-
25 ciation Insurance Fund—

1 (A) had outstanding loans, or had other-
2 wise received funds, from the Department of
3 the Treasury, the Federal Financing Bank, or
4 any Federal Reserve bank; or

5 (B) had a negative fund balance; and

6 (4) to any insured credit union that has failed
7 and received funds, if during either the fiscal year
8 in which the credit union failed or the fiscal year in
9 which the credit union received funds, as defined in
10 section 406, the National Credit Union Share Insur-
11 ance Fund—

12 (A) had outstanding loans, or had other-
13 wise received funds, from the Department of
14 the Treasury, the Federal Financing Bank, or
15 any Federal Reserve Bank; or

16 (B) had a negative fund balance.

17 **SEC. 405. REMOVAL OF CUSTOMER INFORMATION FROM**
18 **EXAMINATION REPORTS.**

19 In making available reports of examinations under
20 section 402, each appropriate Federal banking agency
21 shall excise the following information:

22 (1) NONINSTITUTION-AFFILIATED PARTIES.—

23 The name of any person who is not an institution-
24 affiliated party with respect to an insured depository

1 institution and any other identifying information
2 with respect to any such person.

3 (2) INSTITUTION-AFFILIATED PARTIES.—The
4 name of any institution-affiliated party and any in-
5 formation relating to an institution-affiliated party
6 that is not relevant to the relationship between the
7 insured depository institution and the party.

8 (3) OPEN INSTITUTIONS.—The name of any
9 open insured depository institution and any other
10 identifying information with respect to any such in-
11 stitution.

12 (4) EXAMINERS.—Any reference to any exam-
13 iner or other banking agency employee involved in
14 the examination of the insured depository institu-
15 tion.

16 (5) WHISTLEBLOWERS.—Any reference to any
17 person who has provided information in confidence
18 to a banking agency which may be utilized to pursue
19 a civil or criminal action.

20 **SEC. 406. DEFINITIONS.**

21 For purposes of this section—

22 (1) an insured depository institution has
23 “failed” if the Federal Deposit Insurance Corpora-
24 tion, Agency, or National Credit Union Administra-
25 tion Board—

1 (A) has been appointed as receiver or liq-
2 uidating agent for such institution; or

3 (B) has exercised the power to provide as-
4 sistance under section 13(c)(2) of the Federal
5 Deposit Insurance Act or the analogous powers
6 under section 21A of the Federal Home Loan
7 Bank Act;

8 (2) an insured depository institution has “re-
9 ceived funds” if the institution, any company that
10 controls such institution, or any acquiring institution
11 receives cash or other valuable consideration from
12 the National Credit Union Administration Board,
13 the Agency, the Federal Deposit Insurance Corpora-
14 tion, or any Federal Reserve bank that lends for
15 more than 30 days while the insured depository in-
16 stitution is critically undercapitalized within the 1-
17 year period before the failure of the insured deposi-
18 tory institution whether in the form of a loan, a pay-
19 ment to depositors or other creditors, the assump-
20 tion of liabilities, or otherwise;

21 (3) the term “insured depository institution”
22 has the same meaning as in section 3 of the Federal
23 Deposit Insurance Act, except that such term in-
24 cludes an insured credit union, as defined in section
25 101 of the Federal Credit Union Act; and

1 (4) the term “appropriate banking agency”
2 means the Federal Deposit Insurance Corporation,
3 the Board of Governors of the Federal Reserve Sys-
4 tem, the Comptroller of the Currency, the Office of
5 Thrift Supervision, or the National Credit Union
6 Administration Board, and, in the case of a State-
7 chartered depository institution, the appropriate
8 State depository institution regulatory agency.

9 **SEC. 407. ADDITIONAL DISCLOSURES BY FDIC, NCUA, AND**
10 **AGENCY.**

11 (a) BORROWERS.—Not later than 6 months after
12 being appointed receiver or liquidating agent for any failed
13 institution that received funds, as defined in section 406,
14 the Federal Deposit Insurance Corporation, the National
15 Credit Union Administration, or the Agency, as appro-
16 priate, shall make available to the public the name and
17 loan balance of any borrower who—

18 (1) was an executive officer, director, or prin-
19 cipal shareholder of the institution, or a related in-
20 terest of any such person, as such terms are defined
21 in section 22(h) of the Federal Reserve Act; and

22 (2) at the time that the receiver was appointed,
23 was more than 90 days delinquent on a loan.

24 (b) TRANSACTIONS.—Not later than 12 months after
25 being appointed receiver or liquidating agent for any failed

1 institution that received funds, as defined in section 406,
2 the Federal Deposit Insurance Corporation, the National
3 Credit Union Administration Board, or the Agency shall
4 make available, and update periodically thereafter, a list
5 of pending and settled lawsuits brought by such agency
6 involving transactions (other than loans described in sub-
7 section (a)) that caused a material loss to such institution
8 or to the deposit insurance fund.

9 **SEC. 408. GAO AUDITS.**

10 (a) IN GENERAL.—The Comptroller General of the
11 United States shall selectively audit examination reports
12 made available to the public by the appropriate Federal
13 banking agencies under section 402, and disclosures made
14 by the Federal Deposit Insurance Corporation, National
15 Credit Union Administration, and Agency under section
16 407, to assess compliance with the requirements of those
17 sections.

18 (b) NATURE, SCOPE, TERMS, AND CONDITIONS.—
19 The Comptroller General shall determine the nature,
20 scope, terms, and conditions of audits conducted under
21 this section.

1 **TITLE V—COURT-ORDERED RES-**
2 **TITUTION IN CASES OF FI-**
3 **NANCIAL INSTITUTION**
4 **FRAUD AND PRIVATE AC-**
5 **TIONS**

6 **SEC. 501. IMPROVEMENTS IN COLLECTION OF COURT-OR-**
7 **DERED RESTITUTION IN CASES OF FINAN-**
8 **CIAL INSTITUTION FRAUD.**

9 (a) IN GENERAL.—Section 8 of the Federal Deposit
10 Insurance Act (12 U.S.C. 1818) is amended by adding at
11 the end the following new subsection:

12 “(w) SPECIAL RULES RELATING TO BANKING LAW
13 CONVICTIONS.—

14 “(1) PREJUDGMENT ATTACHMENT OF PRO-
15 CEEDS OF BANKING LAW VIOLATION.—In the case of
16 any property obtained by any person as a result of
17 any act which the Attorney General has probable
18 cause to believe is a banking law violation or any
19 property traceable to any such act, such property
20 may be treated as property obtained from a banking
21 law violation, or as property traceable to such viola-
22 tion, for purposes of section 1345(a)(2) of title 18,
23 United States Code.

24 “(2) RESTITUTION DUE UPON ISSUANCE OF
25 ORDER.—Notwithstanding paragraph (1) of section

1 3663(f), in the case of an order of restitution issued
2 in connection with a conviction for a banking law
3 violation, restitution shall be due in full as of the
4 date of the order.

5 “(3) RESTITUTION ORDER ENFORCEABLE
6 UNTIL PAID.—Notwithstanding any provision of sec-
7 tion 3663 of title 18, United States Code, any res-
8 titution order issued under such section in connec-
9 tion with a conviction for a banking law violation
10 shall remain enforceable under such title until the
11 total amount of restitution has been paid.

12 “(4) ENFORCEMENT OF RESTITUTION ORDER
13 AS A LIEN.—In addition to the enforcement author-
14 ity under subsection (h) of section 3663 of title 18,
15 United States Code, a restitution order issued under
16 such section in connection with a banking law viola-
17 tion—

18 “(A) shall constitute a lien against all of
19 the defendant’s property; and

20 “(B) may be recorded as a lien in any ap-
21 propriate Federal or State office for the record-
22 ing of liens against real or personal property.

23 “(5) APPOINTMENT OF TEMPORARY RE-
24 CEIVER.—In the case of any action to enforce a res-
25 titution order issued under section 3663 of title 18,

1 United States Code, in connection with a banking
2 law violation, the court—

3 “(A) on the motion of—

4 “(i) a recipient of restitution under
5 the order; or

6 “(ii) any person authorized to act on
7 behalf of any such recipient; or

8 “(B) on the court’s own motion,
9 may appoint a temporary receiver to administer the
10 defendant’s assets to ensure payment of restitution
11 pursuant to the order to the maximum possible ex-
12 tent.

13 “(6) DISCLOSURE OF FINANCIAL INFORMATION
14 IN PRESENTENCE REPORT TO RECIPIENTS OF RES-
15 TITUTION.—In any case in which a restitution order
16 has been issued under section 3663 of title 18, Unit-
17 ed States Code, in connection with a banking law
18 violation, any financial information relating to the
19 defendant which is contained in the report on the
20 presentence investigation conducted pursuant to
21 Rule 32(c) of the Federal Rules of Criminal Proce-
22 dure with respect to such violation shall be made
23 available by the court after the sentencing of the de-
24 fendant to any recipient of restitution under the
25 order and any person authorized to act on behalf of

1 any such recipient, including any person who files an
2 action on behalf of the Agency under subsection (x).

3 “(7) PAYMENT OF RESTITUTION DIRECTLY TO
4 AGENCY.—

5 “(A) IN GENERAL.—Notwithstanding any
6 provision of section 3663 of title 18, United
7 States Code, or the terms of any restitution
8 order issued under such section in connection
9 with a banking law violation before the date of
10 the enactment of the Revitalization of Deposi-
11 tory-Institution Liquidation Procedures Act of
12 1993, that portion of the amount of restitution
13 under any order under such section which ac-
14 crues to the benefit of the Agency in accordance
15 with such order, including any amount accruing
16 to the Agency in the Agency’s capacity as con-
17 servator or receiver for an insured depository
18 institution, shall be paid directly to the Agency
19 by the defendant subject to the restitution
20 order.

21 “(B) NOTICE BY AGENCY.—If the Agency
22 succeeds to the interest of any person receiving
23 restitution under section 3663 of title 18, Unit-
24 ed States Code, in connection with a banking
25 law violation, the Agency shall promptly notify

1 the defendant who is subject to the restitution
2 order of the amount which shall be paid directly
3 to the Agency and the procedure for making
4 such payment.

5 “(C) PROCEDURES.—The Agency the At-
6 torney General, and the Director of the Admin-
7 istrative Office of the United States Courts
8 shall establish procedures for providing notice
9 to any appropriate officer or employee of the
10 United States, any appropriate court of the
11 United States, or any other interested party to
12 any restitution order issued under section 3663
13 of title 18, United States Code, in connection
14 with a banking law violation that the Agency
15 has succeeded to the interest of any person re-
16 ceiving restitution under such order.

17 “(D) APPLICABILITY TO RTC AND NCUA.—
18 If any portion of the amount of any restitution
19 ordered under section 3663 of title 18, United
20 States Code, accrues to the benefit of the Agen-
21 cy or the National Credit Union Administra-
22 tion, subparagraphs (A), (B), and (C) shall be
23 applied by substituting “Resolution, Asset Man-
24 agement and Liquidation Agency” or ‘National
25 Credit Union Administration’, as the case may

1 be, for ‘Corporation’ each place such term ap-
2 pears.

3 “(E) SCOPE OF APPLICATION.—This para-
4 graph shall apply with respect to restitution
5 payable under any restitution order issued
6 under section 3663 of title 18, United States
7 Code, without regard to the date of issue of the
8 order.

9 “(8) CONSIDERATION OF DEFENDANT’S ABIL-
10 ITY TO PAY PROHIBITED.—In determining the
11 amount of any restitution ordered under section
12 3663 of title 18, United States Code, in connection
13 with a banking law violation or making any deter-
14 mination under section 3663(g) of such title with re-
15 spect to any defendant who is subject to such order,
16 the court shall not take into account the ability of
17 the defendant to pay.

18 “(9) NOTICE TO RECIPIENT OF RESTITU-
19 TION.—If the full amount of restitution required to
20 be paid by a defendant pursuant to a restitution
21 order issued under section 3663 of title 18, United
22 States Code, in connection with a banking law viola-
23 tion has not been paid before the end of any period
24 of supervised release of such defendant pursuant to
25 the sentence of the court, the United States Parole

1 Commission or the probation officer of a district
2 court of the United States, as the case may be, shall
3 provide notice of the end of such period to each re-
4 cipient of restitution under such order who has not
5 been fully repaid.

6 “(10) BANKING LAW VIOLATION DEFINED.—
7 For purposes of this subsection and subsection (x),
8 the term ‘banking law violation’ has the meaning
9 given to such term in section 3322(d) of title 18,
10 United States Code.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect at the end of the 90-day
13 period beginning on the date of the enactment of this Act
14 and shall apply with respect to any banking law violation
15 or restitution order issued under section 3663 of title 18,
16 United States Code, in connection with any such violation
17 without regard to the date on which the violation was com-
18 mitted or the date of issue of the order.

19 **SEC. 502. PRIVATE ACTIONS TO COLLECT RESTITUTION.**

20 (a) IN GENERAL.—Section 8 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1818) is amended by inserting
22 after subsection (w) (as added by section 504 of this title)
23 the following new subsection:

1 “(x) PRIVATE ACTIONS TO COLLECT RESTITUTION
2 ORDERED IN CONNECTION WITH BANKING LAW VIOLA-
3 TIONS.—

4 “(1) IN GENERAL.—If any portion of the
5 amount of restitution ordered under section 3663 of
6 title 18, United States Code, for which the Agency
7 is the recipient, including any amount accruing to
8 the Agency in the Agency’s capacity as conservator
9 or receiver for any insured depository institution
10 which is a recipient under the order, remains out-
11 standing at the end of the 6-month period beginning
12 on the later of—

13 “(A) the date the restitution order is is-
14 sued; or

15 “(B) in the case of any such depository in-
16 stitution, the date of the appointment of the
17 Agency as conservator or receiver for the depos-
18 itory institution.

19 any person may file an action in a Federal or State
20 court of competent jurisdiction to recover, on behalf
21 of the Agency any asset of, or traceable to, any per-
22 son liable for such portion of the restitution in satis-
23 faction of the order.

24 “(2) SHARE OF ASSETS.—Subject to paragraph
25 (9), if any asset is recovered on behalf of the Agency

1 in an action under paragraph (1), the person who
2 brought the action shall be entitled to receive from
3 the Agency an amount equal to the sum of—

4 “(A) 30 percent of that portion of the re-
5 covery value of all the assets recovered pursu-
6 ant to such action which does not exceed
7 \$1,000,000;

8 “(B) 20 percent of that portion of the re-
9 covery value of all the assets recovered pursu-
10 ant to such action which exceeds \$1,000,000
11 and does not exceed \$5,000,000;

12 “(C) 10 percent of that portion of the re-
13 covery value of all the assets recovered pursu-
14 ant to such action which exceeds \$5,000,000
15 and does not exceed \$10,000,000; and

16 “(D) 5 percent of that portion of the re-
17 covery value of all the assets recovered pursu-
18 ant to such action which exceeds \$10,000,000.

19 “(3) DOUBLE AWARDS PROHIBITED.—No per-
20 son who receives, pursuant to paragraph (2), any
21 share of an asset recovered in an action under para-
22 graph (1) shall be entitled to receive or retain any
23 reward under section 34 of the Federal Deposit In-
24 surance Act or section 3059A of title 18, United

1 States Code, for providing any information relating
2 to such asset.

3 “(4) PROTECTION OF MOVING PARTY.—The
4 provisions of section 3059A(e) of title 18, United
5 States Code, shall apply with respect to any person
6 who brings an action under paragraph (1) in the
7 same manner as such provisions apply to any person
8 described in such section.

9 “(5) NOTICE TO AGENCY.—Any person who
10 brings an action under this subsection shall prompt-
11 ly notify the Agency of—

12 “(A) the filing of any action under this
13 section;

14 “(B) any final judgment or order with re-
15 gard to such action; and

16 “(C) any settlement discussions among the
17 parties to such action.

18 “(6) SETTLEMENT WITHOUT AGENCY CONSENT
19 PROHIBITED.—No settlement agreement with regard
20 to any action under paragraph (1) may be entered
21 into or agreed to by any person who brought the ac-
22 tion on behalf of the Agency without the prior writ-
23 ten consent of the Agency.

24 “(7) COUNTERCLAIMS.—If a counterclaim is
25 filed in any action under paragraph (1), no action

1 may be taken in connection with such action until
2 the counterclaim has been served on any appropriate
3 party, including the Attorney General or the Agency.

4 “(8) AWARD OF COST AND ATTORNEY FEES TO
5 PREVAILING PLAINTIFF.—In addition to any amount
6 received under paragraph (2) by any person who
7 brings an action on behalf of the Agency under
8 paragraph (1) and prevails, the court, in the court’s
9 discretion, may allow the person reasonable attor-
10 neys’ fees and other costs of such person in connec-
11 tion with such action.

12 “(9) INELIGIBILITY OF CERTAIN PERSONS FOR
13 SHARE OF ASSETS.—Paragraph (2) shall not apply
14 with respect to the following persons in the case of
15 any action brought by any such person under para-
16 graph (1) in connection with a restitution order re-
17 ferred to in such paragraph:

18 “(A) Any current or former officer or em-
19 ployee of the United States or any State who
20 directly or indirectly obtained, in whole or in
21 part, any information with respect to any asset
22 which is the subject of the action while acting
23 within the course of such officer’s or employee’s
24 government employment.

1 “(B) Any person who participated in any
2 banking law violation which resulted in the issu-
3 ance of the restitution order.

4 “(C) Any institution-affiliated party who
5 withheld any information which such person
6 had a fiduciary duty to disclose relating to any
7 banking law violation that resulted in the issu-
8 ance of the restitution order.

9 “(D) Any member of the immediate family
10 of a defendant who is subject to the restitution
11 order.

12 “(10) EXCEPTION FOR CERTAIN ASSETS.—This
13 subsection shall not apply with respect to any asset
14 referred to in paragraph (1) in which the Agency
15 has—

16 “(A) perfected a security interest before
17 the date an action is filed under paragraph (1);
18 or

19 “(B) otherwise asserted a legal interest as
20 a matter of public record before such date.

21 “(11) AVOIDABLE TRANSFERS.—Any person
22 who brings an action under paragraph (1) with re-
23 spect to any asset may exercise any authority of the
24 Agency under section 11(d)(17) to avoid a transfer

1 and recover the value of the asset, subject to the
2 provisions of such section.

3 “(12) APPLICABILITY TO AGENCY AND NCUA.—

4 If any portion of the amount of any restitution or-
5 dered under section 3663 of title 18, United States
6 Code, accrues to the benefit of the Agency or the
7 National Credit Union Administration, this sub-
8 section shall be applied by substituting ‘Resolution,
9 Asset Management and Liquidation Agency’ or ‘Na-
10 tional Credit Union Administration’, as the case may
11 be, for ‘Corporation’ each place such term appears,
12 except that section 207(b)(16) of the Federal Credit
13 Union Act shall apply with respect to the authority
14 of any person under paragraph (11) to avoid a
15 transfer of an asset and recover the value of the
16 asset on behalf of the National Credit Union Admin-
17 istration.”.

18 (b) SCOPE OF APPLICATION.—The amendment made
19 by subsection (a) shall apply to any restitution order is-
20 sued under section 3663 of title 18, United States Code,
21 in connection with a banking law violation which is in ef-
22 fect, or becomes effective, on or after the date of the enact-
23 ment of this Act.

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